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No. _____

Supreme Court, U.S.
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IN THE SUPREME COURT OF THE UNITED

STATES
JOSEPH F. SPANIOLO, JR.
CLERK

OCTOBER TERM, 1986

TOWNSHIP OF PISCATAWAY, TOWNSHIP OF WOODBRIDGE,
BOROUGH OF NORTH ARLINGTON, BOROUGH
OF PARAMUS, and BOROUGH OF WOODCLIFF LAKE,

Petitioners

v.

NEW JERSEY CITIZEN ACTION, LEAGUE OF CONSER-
VATION VOTERS, PARAMUS CITIZENS FOR A NUCLEAR
WEAPONS FREEZE, PENNSYLVANIA PUBLIC INTEREST
COALITION, REPUBLICAN CITY COMMITTEE OF
PHILADELPHIA, AMERICANS FOR DEMOCRATIC ACTION
OF SOUTHEASTERN PA., and FRIENDS OF BOB EDGAR,

Respondents.

APPENDIX TO PETITION FOR A WRIT OF CERTIORARI
to the United States Court of Appeals for
the Third Circuit

KIRSTEN, FRIEDMAN & CHERIN
Phillip Lewis Paley
Lionel J. Frank
17 Academy Street
Newark, N.J. 07102
(201) 623-3600
Counsel for
Township of Piscataway

31887

Arthur W. Burgess
701 Amboy Avenue
Woodbridge, N.J. 07095
(201) 636-0020
Counsel for
Woodbridge Township

Walter J. Doran, Jr.
E40 Midland Avenue
P.O. Box 792
Paramus, N.J. 07653
(201) 262-7007
Counsel for
Borough of Paramus

Edwin C. Eastwood, Jr.
723 Kennedy Boulevard
North Bergen, N.J. 07047
Counsel for
Borough of North Arlington

Randall, Randall & Stevens
Harry Randall, Jr.
287 Kinderkamack Road
Westwood, N.J. 07675
(201) 664-0505
Counsel for
Borough of Woodcliff Lake

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UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

NO. 85-5321

NEW JERSEY CITIZEN ACTION AND
THE NEW JERSEY LEAGUE OF
CONSERVATION VOTERS,

Appellants,

v.

EDISON TOWNSHIP, GLEN RIDGE
TOWNSHIP, HARRINGTON PARK BOROUGH,
NORTH ARLINGTON BOROUGH, TOWN OF
NUTLEY, PARAMUS BOROUGH, PISCATAWAY
TOWNSHIP, ROSELAND BOROUGH,
WOODBRIIDGE TOWNSHIP and WOODCLIFF
LAKE BOROUGH

PARAMUS CITIZENS FOR A NUCLEAR
WEAPONS FREEZE,

Plaintiff-Intervenor

v.

PARAMUS BOROUGH

On Appeal from the United States
District Court for the
District of New Jersey
(D.C. Civil No. 84-0745)

Argued February 19, 1986

Before: WEIS and SLOVITER, Circuit
Judges, and POLLAK, District
Judge*

(Opinion filed August 5, 1986)

Frank Askin (Argued)
Eric Neisser
Constitutional Litigation Clinic
Rutgers Law School
Newark, New Jersey

Attorneys for New Jersey Citizen
Action and Paramus Citizens for a
Nuclear Weapons Freeze
On behalf of the American Civil
Liberties Union

Timothy Haley
Gordon & Gordon
West Orange, New Jersey

Attorney for League of
Conservation Voters

Thomas Asher
Washington, D.C.

Of Counsel

Phillip Lewis Paley (Argued)
Lionel J. Frank
Kirsten, Friedman & Cherin, P.C.
Newark, New Jersey

Attorneys for the Township
of Piscataway

* Hon. Louis H. Pollak, United States
District Court for the Eastern District
of Pennsylvania, sitting by designation.

3.

Lawrence P. Pollex
Edison, New Jersey

Attorney for Edison Township

James Randall Stevens
Westwood, New Jersey

Attorney for Woodcliff Lake

Daniel P. Mecca
Paramus, New Jersey

Attorney for the Borough of Paramus

Arthur W. Burgess
Woodbridge, New Jersey

Attorney for Woodbridge Township

Edwin C. Eastwood, Jr.
North Bergen, New Jersey

Attorney for the Borough of
North Arlington

David Kairys
Kairys & Rudovsky
Philadelphia, PA

Attorney for Amici Curiae-
Pennsylvania Public Interest
Coalition,
Republican City Committee of
Philadelphia,
Americans for Democratic Action
and Friends of Bob Edgar - on behalf
of Appellants

OPINION OF THE COURT

SLOVITER, Circuit Judge.

This appeal arises out of a suit brought under 42 U.S.C. §1983 by three political action groups against ten New Jersey municipalities, alleging that the municipalities' ordinances regulating door-to-door canvassing and solicitation violated rights protected by the federal and New Jersey constitutions. The district court upheld the challenged provisions against the federal constitutional challenge and dismissed the pendent state claim.

I.

FACTUAL BACKGROUND

Appellants are New Jersey Citizen Action (NJCA), the League of Conservation Voters (Conservation League), and Paramus Citizens

for a Nuclear Weapons Freeze (Paramus Freeze) (hereafter collectively referred to as "citizens groups"). NJCA, a political action federation of individuals and organizations, including trade unions, church groups, and senior citizen associations, engages in educational, research, canvassing, and citizen lobbying activities to find legislative and political solutions for problems of public concern in New Jersey, such as energy costs, taxes, toxic waste and unemployment. Conservation League, a national political action committee which maintains an office in New Jersey, educates the public and lobbies legislative bodies about environmental issues. Paramus Freeze is an unincorporated association working to increase public support for a nuclear weapons freeze; its activities are limited to Paramus.

6.

All of these organizations use door-to-door canvassers to present their programs to citizens, to receive citizens' viewpoints, and to raise funds. The district court found that NJCA and Conservation League raise over 80% of their funds through canvassing. These organizations hire as canvassers mostly young people who are paid a salary, which is conditioned on their meeting a preset fundraising goals.

Paramus Freeze has mostly Holder canvassers who are all volunteers. The NJCA and Conservation League canvassers canvass only from 4 p.m. to 9 p.m.

The citizens groups¹ originally filed suit against ten New Jersey municipalities,² alleging that the sections of the municipal

1. The district court granted Paramus Freeze leave to intervene as a plaintiff, pursuant to Fed.R.Civ.P. 24(b).

2. Edison Township, Glen Ridge Township, Harrington Park Borough, North Arlington Borough, Town of Nutley, Paramus Borough, Piscataway Township, Roseland Borough, Woodbridge Township, and Woodcliff Lake Borough. After the hearing, and while the matter was under consideration, plaintiffs moved to amend their complaint to seek certification of a defendant class under Fed.R.Civ.P. 23.

ordinances that regulate door-to-door solicitation and canvassing violate plaintiffs' rights under the First and Fourteenth Amendments to the United States Constitution and similar guarantees of the New Jersey constitution. Although temporary restraining orders were issued against two towns, the district court ultimately merged the citizens groups' request for a preliminary injunction against all defendants with a trial on the merits, limited to the claim for injunctive relief. It reserved the issues raised by plaintiff's claims for money damages.

At trial, the citizen groups challenged only those sections of the ordinances that prohibited noncommercial door-to-door canvassing and solicitation during evening hours, generally after 5 p.m. or 6 p.m. or sunset, and that required prospective solicitors to be fingerprinted. They do not challenge the municipalities' right to bar canvassing after 9 p.m.³

³ By the trial's end, only six municipalities were actively defending the suit. Before testimony was completed, the district court issued a declaratory judgment that Edison's challenged ordinance did not apply to plaintiffs or other noncommercial house-to-house solicitation. While Edison's liability for damages, costs and attorneys' fees remained in issue, it was no longer involved in the injunction proceeding. Glen Ridge stipulated to the same effect. Both Nutley and Roseland apparently decided not to enforce their ordinances against plaintiffs, but no stipulation to that effect was entered in the district court record.

After hearing extensive testimony from both sides, the district court issued an opinion containing detailed findings of fact and conclusions of law in which it found that "the preponderance of evidence indictes that the time restrictions on canvassing to not deter or prevent crime in these municipalities as a matter of fact," App. at 32, and that the "preponderance of the evidence ... indicates that these plaintiffs do not have meaningful alternatives to evening canvassing ... [because] plaintiffs c[an] not survive economically if the restrictions at issue remian in place." App. at 33.

The court thus found that "the preponderance of the evidence... weighs rather heavily in the direction of the plaintiffs. ..." App. at 32. However, the court felt

"constrained" to hold that the prohibition of evening canvassing was constitutional because of this court's decision in *Pennsylvania Alliance for Jobs & Energy v. Council of the Borough of Munhall* (PAJE), 743 F.2d 182 (3d Cir. 1984), which the district court read as holding that "restrictions on door-to-door canvassing which prohibit such activity after dark or after 5:00 p.m. are per se facially reasonable." App. at 30.

Turning to the fingerprinting requirements, the district court found that "there is no evidence on this record that canvassers have been involved in criminal activity. ..." App. at 35-36. Again, however, the court found itself circumscribed by prior decisions of this court to uphold the regulation if it was "reasonably related" to a

valid state interest. Therefore, the court rejected plaintiffs' challenges to these regulations as well.

The court refused the citizens groups' request to retain jurisdiction over their claims that other provisions of the ordinances are also unconstitutional holding that the issues had not been preserved.⁴ Finally,

⁴ Some of the other provisions challenged in the complaint are the requirement of Paramus that each applicant for a solicitation license submit a certificate from a Bergen County physician certifying that the applicant is free from contagious, infectious, or communicable diseases; the requirements of Paramus, Piscataway, and Woodbridge for fairly extensive character references from applicants; and the discretion vested in the chief of police of four municipalities to deny canvassing permits on the basis of unspecific criteria.

the court declined to exercise pendent jurisdiction over the state constitutional claim. Plaintiffs do not challenge these rulings on appeal.

The citizens groups appeal⁵, claiming first that the district court misconstrued the law in this circuit, and that the district court's factual findings required it to hold the hours restrictions unconstitutional. Second, plaintiffs contend that the finger-

⁵ Six of the ten original defendant municipalities have joined appellees' brief on appeal. These six are Piscataway, Edison, Woodcliff Lake, Paramus, Woodbridge and North Arlington. Appellees' brief states that the Borough of Harrington Park, which actively litigated this matter in the district court, "has advised that it does not wish to participate in this appeal." Appellees' Brief at 1 n.1. However, because the district court upheld Harrington Park's ordinance, we must consider its constitutionality in this appeal.

printing requirement is not governed by a reasonable relation test, and that, under the proper more stringent analysis, the fingerprinting requirement is unconstitutional. On appeal, this court granted the motion of the Pennsylvania Public Interest Coalition, Republican City Committee of Philadelphia, Americans for Democratic Action of Southeastern Pennsylvania, and Friends of Bob Edgar [the Democratic Party's candidate in Pennsylvania for the United States Senate] to file an amici curiae brief. The amici urge reversal, arguing in their joint brief that "their ability to function -- for some perhaps even their survival -- is at issue." Brief of Amici at 1.

THE ORDINANCES

A brief description of the challenged ordinances, which include a potpourri of exclusions, may be helpful to an understanding of the relevant legal issues. Each limits the hours during which door-to-door soliciting and canvassing can occur, but there are some variations. North Arlington prohibits canvassing between 5 p.m. and 9 a.m. and on legal holidays, Sundays and during the month of December. Woodbridge prohibits canvassing during the month of December. Woodbridge prohibits canvassing during these same hours, but without any daily or monthly restrictions. However, "[c]ertain charitable, religious, and historical societies," defined by reference to state law, are exempted from some aspects of the ordinance. Woodcliff Lake's ordinance

likewise restricts canvassing to between 9 a.m. and 5 p.m. and prohibits canvassing altogether on Sundays. The ordinance contains an exception for "[a]ny person soliciting votes for a bona fide candidate for public office." In addition, the ordinance vests in the Mayor and Council of the town the power to suspend the provisions of the ordinance with respect to nonprofit organizations. Harrington Park's ordinance as attached to the complaint also prohibits canvassing after 5 p.m. and on Sundays and holidays, altogether the district court found that the curfew was sunset. The ordinance excludes from its licensing provision "nonprofit, religious, charitable, civic, or veterans' organizations" if those organizations file an application and are found to be "bona fide" by the Borough's police department.

THE ORDINANCES

When this suit was filed Paramus permitted canvassing only on weekends from 9 a.m. to 6 p.m., but the district court noted that it has since amended its ordinance to allow canvassing on Saturdays. See App. at 34 n. 21. The Paramus ordinance contains an exception for "peddlers of food" who are allowed to operate from 9 a.m. to 9 p.m., seven days a week.

Piscataway prohibits solicitation and canvassing after sunset. Although Piscataway's hours limitation appears to apply only to "hawkers and peddlers," and not to "solicitors, canvassers, and itinerant vendors," the district court did not distinguish between Piscataway's ordinance and the others.



Five of the municipal ordinances submitted to this court require solicitors and canvassers to be fingerprinted as a condition for obtaining a license to operate. Woodcliff Lake's ordinance gives the Borough's police department discretion to require fingerprinting if it "determines that fingerprints are necessary for proper identification." However, at the March 27, 1984 hearing, counsel for Woodcliff Lake and North Harrington stated that neither would enforce the fingerprint requirement against plaintiffs.

THE HOURS LIMITATIONS

A. Standard to be Applied

The parties do not dispute the underlying legal premise that door-to-door canvassing and solicitation are protected by the First Amendment, and that this protection is not

diminished because the canvassers seek funds as well as adherents. See *Village of Schaumburg v. Citizens for a Better Environment*, 444 U.S. 620, 632 (1980). Indeed, the Supreme Court has suggested that door-to-door canvassing is entitled to "special solicitude" because it is "much less expensive" than alternative forms of communication. See *Members of the City Council of the City of Los Angeles v. Taxpayers for Vincent*, 466 U.S. 789, 812 n.3- (1984). Despite this solicitude, it is also undisputed that a municipality may subject door-to-door solicitation to reasonable time, place, and manner restrictions that are content neutral. See *Hynes v. Mayor and Council and Borough of Oradell*, 425 U.S. 610, 616-17 (1976); *PAJE*, 743 F.2d at

185. Ordinarily, when a statute or other government action is alleged to infringe on the exercise of First Amendment rights, the state or municipality bears the burden of demonstrating the constitutionality of the action. See *Organization for a Better Austin v. Keefe*, 402 U.S. 415, 419 (1971); see also *Wisconsin Action Coalition v. City of Kenosha*, 767 F.2d 1248, 1257 (7th Cir. 1985). The question before us is whether the municipalities have satisfied their burden of showing that these ordinances are valid time, place and manner regulations.

The Supreme Court has never addressed the constitutionality of regulation of the



hours of canvassing and solicitation.⁶ See Note, Strangers in the Night: Ordinances Restricting the Hours Door-to-Door Solicitation, 63 Wash. U.L.Q. 71, 72 (1985). There is a difference among the Courts of Appeals over the proper standard to apply the time, place, and manner restrictions of ordinances regulating the hours of door-to-door solicitation. Some courts, notably the Second, Seventh, and Eighth Circuits, hold that the hours regulation must be the least restrictive means of accomplishing the municipal purpose, on the theory that such a test effectuates the

⁶ In *Village of Schaumburg v. Citizens for a Better Environment*, 444 U.S. 620 (1980), the Court considered an ordinance that allowed solicitation only between the hours of 9 a.m. and 6 p.m., Monday through Saturday. However, this provision apparently was not challenged by plaintiffs in that lawsuit.

requirement that regulations that have an impact on First Amendment values must be drawn with precision. See *City of Watseka v. Illinois Public Action Council*, No. 84-2605 (7th Cir. July 18, 1986); *Wisconsin Action Coalition v. City of Kenosha*, 767 F.2d 1248, 1257 (7th Cir. 1985); *Association of Community Organizations for Reform Now v. City of Frontenac*, 714 F.2d 813, 818 (8th Cir. 1983); *New York City Unemployed and Welfare Council v. Brezenoff*, 677 F.2d 232, 237-39 (2d Cir. 1982). As the Seventh Circuit has stated, "If there is a less restrictive alternative to a challenged regulation, then the regulation appears to unnecessarily interfere with First Amendment activity and is not as narrowly

drawn as it could be." Wisconsin Action Coalition v. City of Kenosha, 767 F.2d at 1255; see also West Virginia Citizens Action Group, Inc. v. Daley, 324 S.E.2d 713, 721-25 (W. Va. 1984).

On the other hand, it is settled in this court, in an opinion that is binding on us, that such ordinances will be upheld "if [1] they are imposed 'without reference to the content of the regulated speech,...[2] serve a significant governmental interest, and ...[3] leave open ample alternative channels for communication. ...'" PAJE, 743 F.2d at 185 (quoting Heffron v. International Society for Krishna Consciousness, Inc., 452 U.S. 640, 648 (1981)). In PAJE, we also stressed that "regulations of door-to-door canvassing must be precisely drawn to serve the interests they

are designed to further." PAJE, 743 F.2d at 187 (emphasis added) (citing Secretary of State of Maryland v. Joseph H. Munson Co., 104 S.Ct. 2839, 2853 (1984) and Village of Schaumburg, 444 U.S. at 637). Although this may be considered as a separate factor in evaluation of a statute's constitutionality, we view it as relevant to the second inquiry, that which focuses on the manner in which the regulation serves the government interest.

Plaintiffs do not argue that the ordinances must be evaluated under the standard applied to regulations that are not content neutral, thus conceding that the first Heffron factor has been satisfied. They challenge the

district court's conclusion as to the remaining two factors. They argue that the district court improperly deferred to the municipalities' legislative judgment in holding that the regulations precisely serve the legislative goals, and that the district court misconstrued the decision in PAJE to compel a holding that the availability of certain other modes and times of communication are per se adequate alternatives to evening canvassing.

B. Is the Regulation Precisely Tailored to Serve Government Interests?

As we suggested earlier, there are two components to the second Heffron factor. The first is whether the government interest asserted is a substantial one. The second looks to how that interest is served by the regulation in question.

The municipalities assert that the hours regulations are justified by the government interests in preventing or deterring crime and protecting the legitimate privacy expectations of citizens at home. The district court found these interests to be substantial. That holding is consistent with our earlier opinion in PAJE, 743 F.2d at 187, and with the Supreme Court's recognition of the "important interests" served when a municipality seeks "to protect its citizens from crime and undue annoyance by regulating soliciting and canvassing." *Hynes v. Mayor of Oradell*, 425 U.S. at 616-17.

The mere assertion of substantial government interests is not enough to satisfy the second Heffron factor. A valid time, place, and manner regulation must also "serve" that

significant governmental interest. *Heffron*, 452 U.S. at 649. In *Heffron*, the Supreme Court upheld the limitation of groups distributing and selling literature and soliciting funds to fixed locations at a fairgrounds, in part because there had been a finding, based on stipulated facts, that the state interest in the orderly movement of a large crowd and in avoiding congestion was significantly furthered by the limitation. *Id.* at 645-46, 651.

In this case, however, the district court made no such finding. On the contrary, it found "that ... the preponderance of the evidence indicates that the time restrictions on canvassing do not deter to prevent crime as a matter of fact." App. at 32. Despite this finding, the district court construed

this court's precedent to mean that "a facially reasonable relation between the restrictions and the asserted state interests is all that is required." App. at 32. The court based this standard partially on its conclusion that "'the legislative judgment that [its] goals are advanced by an ordinance is deferred to unless it is facially unreasonable.'" Id. at 30 (quoting *Frumer v. Cheltenham Township*, 709 F.2d 874, 877 (3d Cir. 1983)). The citizens groups argue that *Frumer* should not be read so broadly.

Frumer did not involve door-to-door canvassing but a township restriction on affixing temporary signs to utility poles, street signs, or other structures within the right-of-way of public streets or highways.

In upholding the denial of a preliminary injunction, we noted that the district court had concluded that the ordinance serves significant governmental interests in traffic safety and community aesthetics. We rejected the plaintiff's challenge to the district court's conclusion, pointing out that the municipality need not establish this fact by empirical data. *Id.* at 877. It was in that context that we stated that "the legislative judgment that such goals are advanced by an ordinance is deferred to unless it is facially unreasonable." *Id.* We cited *Metromedia, Inc. v. San Diego*, 453 U.S. 490 (1981), where the plurality stated that it would "hesitate to disagree" with the widespread legislative

judgment that billboards pose a threat to traffic safety in the absence of evidence that that judgment was unreasonable. Id. at 509. See also *City of Renton v. Playtime Theaters, Inc.*, 106 S.Ct. 925, 931 (1986) (municipality "was entitled to rely on the experiences of" other cities, "so long as whatever evidence the city relies upon is reasonably believed to be relevant to the problem that the city addresses").

We do not read *Frumer* as suggesting more than that a facially reasonable legislative judgment that a significant governmental interest will be advanced by certain measures

is enough to satisfy the government's initial burden to demonstrate the constitutionality of the statute under challenge. Nothing in Frumer suggests that the legislative judgment that the means chosen will serve the end is irrebuttable. Thus, Frumer cannot support the expansive reading given it by the district court.

We turn next to our later decision in PAJE, which, like the case before us, concerned a challenge to prohibition of evening hours canvassing and solicitation. Unlike this case, there was no hearing in PAJE, and the district court entered summary judgment for defendants sustaining the ordin-

ance. The PAJE district court had found, presumably on the basis of un rebutted affidavits, "that each of the towns established a significant incidence of burglary and home invasion." PAJE, 743 F.2d at 187. The majority further indicated that a canvasser had been "involved in burglary and other crime." Id. We thus construe the statements in PAJE that "[t]he bans of door-to-door canvassing after dark directly and precisely serve the towns' interest in preventing crime" and "directly further the towns' interest in protecting the privacy of their residents," PAJE, 743 F.2d at 187, as an affirmation that the government met its burden to sustain the ordinance by producing this evidence. Judge Becker, in his dissent, disagreed that the record bound by the majority's holding that evidence of this quantum satisfies the government's burden.

The district court relied in part on plaintiffs' expert evidence that, in the district court's words, "there was absolutely no correlation between the existence of canvassing ordinances in the defendant municipalities and the incidence of crime there." App. at 19A-20A (emphasis added). The expert testified that in suburban areas, where most canvassing occurs, most burglaries occur during the day when more homes are vacant, Transcript (Tr.) for 3/27/85 at 90, and most crimes against property are committed by residents of the community in which the crime occurs and not by outsiders. Id. at 92.



One of defendants' witnesses, the police chief of North Arlington, admitted that he did not know how restrictions of canvassing prior to 9 p.m. deterred crime. See Tr. for 7/128/85 at 113. Defendants produced no evidence to support a correlation between canvassing and crime, no evidence that a canvasser had ever committed any crime in these municipalities other than a violation of an anti-canvassing ordinance, no evidence that the municipalities face a heightened crime rate, and no evidence of the experiences of or studies conducted by other towns.

Therefore the district court's own factual findings that there was no correlation between the ordinances and crime prevention and that the time restrictions on canvassing do not deter or prevent crime are supported by the record. These findings compelled the conclusion that the evening hours restrictions on canvassing and solicitation were not precisely tailored to serve the municipalities' legitimate interest in deterring crime.

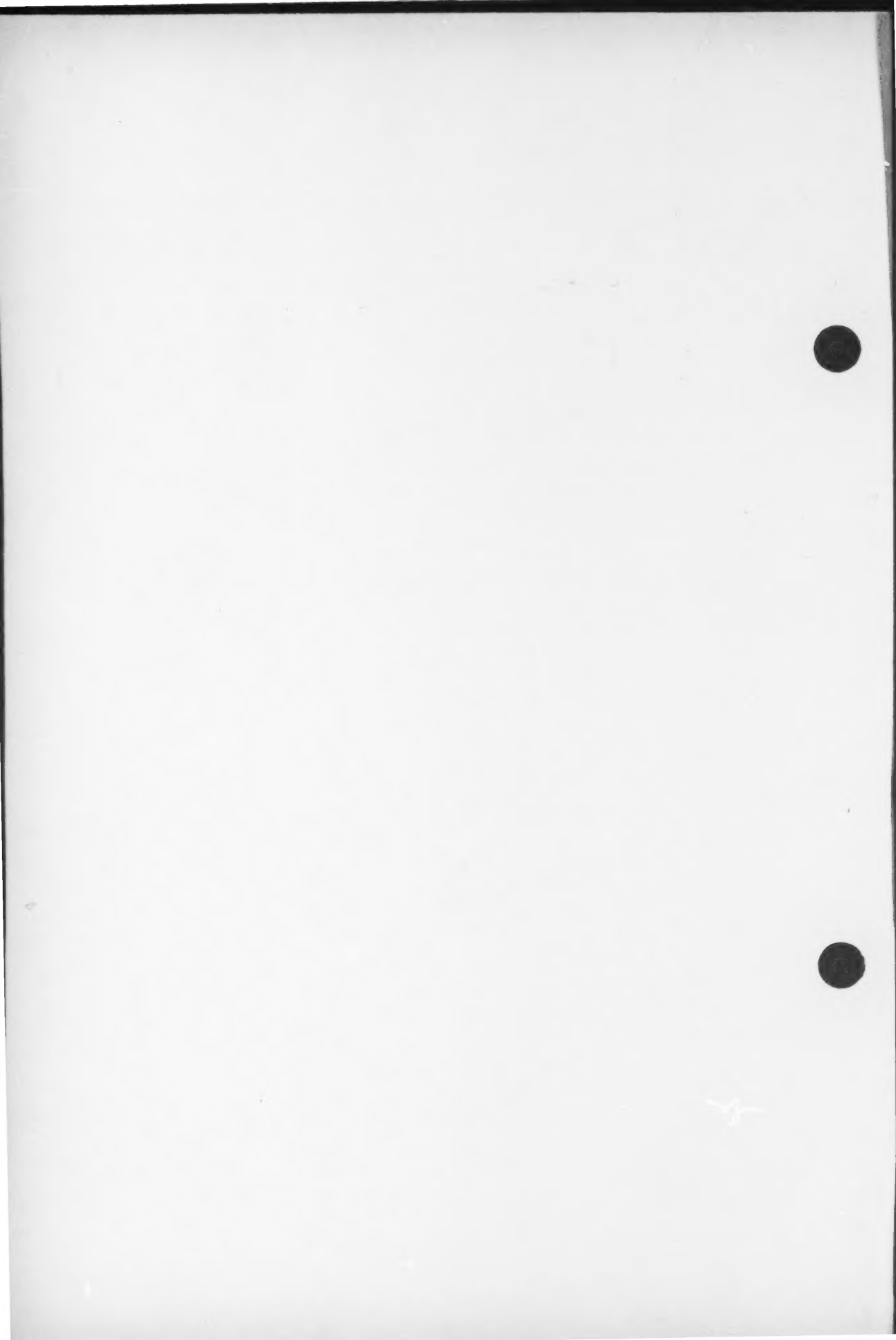
The second state interest asserted to justify the hours regulation is the municipalities' interest in protecting the privacy of their residents. Several facts are significant in connection with our consideration of this interest. First, all of the ordinances except North Arlington's contain some exceptions. This means that the ordinances "protect [] privacy only by reducing the total number of solicitors" or door-to-door merchants, see *Village of Schaumburg*, 444 U.S. at 638, a result which the Supreme Court has found insufficient to support a regulation of door-to-door solicitation. *Id.* at 639.

Second, the record is inconclusive as to the uniformity of the public desire not to be bothered by solicitors in the evening. See App. at 21. Several police officers testified that, based on the number of complaints they had received, people do not like to be bothered in the evening, but the canvassers for the citizens groups testified that they were warmly received by the majority of the people they talked to while canvassing. Moreover, statistics presented by NJCA showed that only above five percent of the responses received by NJCA canvassers were "openly hostile", and that 66 percent of those contacted between 8 p.m. and 9 p.m. signed NJCA petitions. See App. at 66-67.

We do not deprecate the importance of a resident's right to be left alone. "Preserving the sanctity of the home ... is surely an important value", *Carey v. Brown*, 447 U.S. 455, 471 (1980) (cited in *PAJE*, 743 F.2d at 187), and a municipality may draft an ordinance "aimed at the protection of the householders from annoyance, including intrusion upon the hours of rest." *Martin v. City of Struthers*, 319 U.S. 141, 144 (1943). Here, however, the ordinances go beyond the usual "hours of rest" by prohibiting canvassing in the early evening.

An inquiry into the manner in which the ordinances serve the public interest requires the courts to determine whether the state interest advanced by the regulation "is sufficiently substantial to justify the effect of the ordinance on [the speaker's expression]." Taxpayers for Vincent, 466 U.S. at 805. As the Court has reiterated, the regulation must be "precisely tailored." Where, as here, the record shows that many residents do not object to and indeed some warmly receive canvassers during the evening, it is difficult to sustain a conclusion that a complete ban of evening solicitation is "precisely tailored" or that the interest of some residents in privacy should overcome the important First Amendment rights of door-to-door canvassers and solicitors.

Moreover, it is evident that a "precisely tailored" regulation can readily be drafted. Municipalities seeking to protect the privacy rights of their residents who strongly object to solicitation at any time may enact ordinances that require canvassers to observe the individual residents' signs indicating that solicitors are not welcome. See, e.g., *ACORN v. City of Frontenac*, 714 F.2d 813, 819 (8th Cir. 1983). See also *Martin v. City of Struthers*, 319 U.S. at 147-48 (referring to alternative of trespass laws punishing persons who enter property after warning to keep off); cf. *Rowan v. United States Post Office Department*, 397 U.S. 728, 736-38 (1970) (householder may bar unwanted mail). The citizens groups conceded at oral argument that such an ordinance was constitutionally unobjectionable.



Nothing in PAJE suggests that if the ordinance there had not been found to serve the interest in deterrence of crime, as in this case, the interest in the protection of privacy would alone have justified the broad restrictions of First Amendment rights. The PAJE court was not faced with that issue, as we are.

Given the record in this case, and cognizant of the interests involved, we believe the district court was obliged to find that the regulations precluding canvassing before 9 p.m. are not precisely tailored to serve the state interests asserted to support them.

Judge Weis in his dissent does not argue that the restriction on evening canvassing can be sustained under the First Amendment. Nor does he argue that the district court's findings that the time restrictions do not deter or prevent crime in the municipalities and that there are no meaningful alternatives to evening canvassing are not supported in the record. Nonetheless, he argues that we are not free to examine the constitutionality of the ordinances, notwithstanding the facts that no Supreme Court case has yet ruled on this issue and that the only prior decision in this court was based on a substantially different record on the determinative facts.

He reaches this surprising position on the theory that we are bound by what he regards as the "constitutional facts" found by the PAJE court on the questions "whether these regulations will prevent crime, protect privacy, and leave open adequate alternative forms of communication." Dissent typescript op. at 8. We respectfully disagree that these are constitutional facts, that the PAJE court found them to be generally applicable, and that we are bound thereto.

A "constitutional fact" should not be defined, as the dissent suggests, as "unproven (and often unprovable) generalizations that ... are sometimes little more than assumptions or widely-held beliefs [and] which do not have the definiteness associated with narrative facts." Id. at 4. Instead, a constitutional fact is more properly defined as a fact whose "determination is decisive of constitutional rights." Bishin & Stone, Constitutional Facts, reprinted in R. Aldiser, The Judicial Process 704 (1976). The assumptions in the Supreme Court cases about a possible nexus between crime and canvassing were hardly determinative of constitutional rights, since in both cases the Supreme Court held

the regulations at issue violated the canvassers' constitutional rights. See *Hynes v. Mayor of Oradell*, 425 U.S. 610 (1976); *Martin v. City of Struthers*, 319 U.S. 141 (1943).

In general, "constitutional litigation demands fact analysis of the most particularized kind." Karst, *Legislative Facts in Constitutional Litigation*, 1960 Sup. Ct. Rev. 75, 75. In the first Amendment area especially, the Supreme Court has stressed the need for "a particularized inquiry into the nature of the interests at stake." *Metro-media*, 453 U.S. at 503. It is questionable whether "assumptions and widely-held beliefs" have a role to play in such an analysis.

As we explained above, in the PAJE case the court merely held that the evidence submitted by the government there was sufficient to satisfy its burden to sustain the ordinance in the absence of any genuine issue of material fact. Thus, we sustained summary judgment. Surely, that meager record produced before that district court cannot be considered to have foreclosed all future litigation anywhere else in this circuit on this issue no matter how compelling the facts produced by the challengers of an ordinance. In any event, "[w]here the legislative facts of the earlier case concerned only the immediate parties, generalized findings are entitled to less respect in later cases." Karst, *supra*, at 108. As the Supreme Court stated in *United States v. Carolene Products Co.*, 304 U.S. 144 (1938),

Where the existence of a rational basis for legislation whose constitutionality is attacked depends upon facts beyond the sphere of judicial notice ... the constitutionality of a statute predicated upon the existence of a particular state of facts may be challenged by showing to the court that those facts have ceased to exist.

Id. at 153; see also Karst, *supra*, at 108 ("counsel must be given the opportunity to show that earlier findings fail to describe present fact").

The Seventh Circuit has recently applied this principle in the context of an ordinance limiting hours of solicitation in *City of Watseka v. Illinois Public Action Council*, No. 84-2605 (7th Cir. July 18, 1986). It had

previously held such an ordinance invalid in Wisconsin Action Coalition v. City of Kenosha, 767 F.2d 1248 (7th Cir. 1985). It undertook to analyze fully the validity of a similar ordinance enacted by the City of Watseka, holding that the outcome was not controlled by the Kenosha decision because a different factual record had been adduced in the Watseka case. Slip op. at 8. Only after a full consideration, did it find that the Watseka ordinance was also invalid under the First Amendment.

Finally, notwithstanding the dissent's statement to the contrary, nothing in this opinion overrules the PAJE opinion to which we have scrupulously adhered. Nothing in our Internal Operating Procedures bars a subsequent panel from reaching a different conclusion on a different factual record, and we have frequently done so.

We appreciate the intuitive impression, possibly unjustified in fact, that the presence of strangers on the street, particularly in small communities, may engender a crime problem. This intuition may underlie the PAJE holding, since the court in PAJE, 743 F.2d at 187, quoted from that portion of *Martin v. City of Struthers* here the Court stated:



In addition, burglars frequently pose as canvassers, either in order that they may have a pretense to discover whether a house is empty and hence ripe for burglary, or for the purpose of spying out the premises in order that they may return later. Crime prevention may thus be the purpose of regulatory ordinances.

319 U.S. at 144 (footnote omitted). Significantly, the ordinance in *Struthers* was nonetheless held unconstitutional by the Supreme Court.

Also, because a decision on whether the significant and legitimate legislative interests are served by an ordinance is dependent upon the facts adduced by the parties, we recognize the possibility of inconsistent results in the district courts, based upon the records in the particular case, until more general parameters are established. This is troublesome, not only because of the appearance of inconsistency but because it may also encourage, rather than discourage, litigation that is divisive to the community.

Nonetheless, an appellate court must take the record as it comes, and in this case, the record and the findings compel a different result than that reached in PAJE on whether the ordinance is precisely tailored to serve the legislative interests in deterring crime and protective privacy. In any event, although our holding that the evening restrictions are unconstitutional is fully supported by our conclusion that they are not precisely tailored to serve the interests advanced, we hold in the alternative that the ordinances do not satisfy the final Heffron factor, which looks to whether there are available alternative for the channels of communication.

C. Are There Available Alternative Channels of Communication?

The Supreme Court has made clear that "a restriction on expressive activity may

be invalid if the remaining modes of communication are inadequate." Taxpayers for Vincent, 466 U.S. at 812. In addition, the Court has looked at the practicalities of a given situation in determining whether available alternative modes of communication are satisfactory. See Linmark Associates, Inc. v. Township of Willingboro, 431 U.S. 85, 93 (1977). Therefore, the inquiry here is not merely whether alternatives exist to door-to-door solicitation in the evenings, but also whether those alternatives constitute an adequate and practical opportunity to convey the same information. See L. Tribe, American Constitutional Law 684 (1978).

In this case, the district court found that "[c]anvassing is an effective way to make direct personal contact with the public." App. at 21. The court found

that the possible alternatives to door-to-door canvassing, such as direct mail, phone, or shopping mall canvassing, were either "much more expensive", id., or significantly less effective. Id. at 22. Direct mail requires a pre-identified list of people. Canvassing in shopping malls does not permit the canvasser to contact voters in the places of registration.

The court further found that if the citizens groups were not permitted to canvass in the evenings, they "would no longer be able to exist." App. at 22. The district court concluded:

The preponderance of the evidence on the record ... indicates that these plaintiffs do not have meaningful alternatives to evening canvassing. The uncontradicted testimony is to the effect that plaintiffs could not survive economically if the restrictions at issue remain in place. The economic viability of these grass roots organizations is sufficiently tenuous that the use of more expensive means of reaching the public such as direct mail would be prohibitive to their continued operations. Plaintiffs could not survive economically if canvassing was limited to hours of low home occupancy. Further, in some respects there are no alternative to door-to-door canvassing.

App. at 33-34.



In effect, the district court found that none of the alternatives suggested by defendants was adequate. Each of the district court's findings was supported by testimony on the record.⁷

Again, the district court did not allow its findings through to their logical conclusion

⁷ The amici make similar representations in their brief. For example, the Philadelphia Republican City Committee states that the canvassing is done by its committeemen who are employed during the day and are not available except in the evening hours. It also states that it has found evening canvassing more efficient and fruitful than daytime canvassing. Brief of Amici at 2. These representations are consistent with the findings in this case, but we rely only on facts of record.

because of its belief that the PAJE decision foreclosed case-by-case determination of alternative channels of communication. See App. at 34. The district court stated:

Despite my factual findings in this regard, I am again constrained to conclude that where canvassing is permitted during the day and on Saturdays, the use of parks, shopping centers, telephones and mail are per se adequate alternatives to evening canvassing in this circuit.

App. at 29 (citing PAJE, 743 F.2d at 188).

In PAJE, the issue of the adequacy or practicality of alternative forms of communication was referred to in one paragraph, where the court stated merely that "none of the ordinances prevent PAJE from conducting personal solicitation in other forums, such as

parks and shopping districts, or from proselytizing by telephone or mail." Id. at 188. Apparently there was no telephone or mail." Id. at 188. Apparently there was no evidence in the record on this issue, see id., at 193 (dissenting opinion). As we have construed PAJE, the court held that the existence of other fora, which had not been shown to be unavailable, was a sufficient basis to find that the municipalities had satisfied their burden to show available alternatives means of communication. Although the dissent in PAJE believed the defendants had not satisfied their burden, see id. at 194, we are bound by the majority opinion.

Nothing in PAJE suggests that when evidence is adduced that supports the district court's finding that the existing channels are inadequate to satisfy the needs of the canvassers, the court is nonetheless compelled to find that there are alternatives that meet the third Heffron inquiry. Such a construction would make a mockery of the inquiry itself. It would mean that even if a political candidate rushing to meet a deadline for signatures of a nominating petition could show that a shopping mall was inadequate for his or her purposes because passersby could not be assumed to reside in the appropriate district, the court would be compelled to find that the mere existence of a shopping mall justified a ban on door-to-door solicitation for signatures in the evening. To state the proposition



is to reject it.⁸ PAJE does not compel the district court to disregard the evidence and its own factual findings.

⁸ In *Struthers*, the Court stated:

Of course, as every person acquainted with political life knows, door to door campaigning is one of the most accepted techniques of seeking popular support, while the circulation of nominating papers would be greatly handicapped if they could not be taken to the citizens in their homes. Door to door distribution of circulars is essential to the poorly financed causes of little people.

Martin v. City of Struthers, 319 U.S. at 146 (footnote omitted).



We caution that our holding is limited to the canvassers and solicitors before us, whose political objective makes it essential that they personally contact persons at home in their voting districts. We expressly disclaim any necessary applicability to trade solicitation, which may entail different considerations.

In summary, we hold that the municipal ordinances at issue in this case unconstitutionally restrict plaintiff's right to conduct door-to-door soliciting and canvassing because there are no alternative channels of communication that adequately serve their important First Amendment rights.

THE FINGERPRINTING REQUIREMENT

The citizens groups also contend that the provisions of some of the ordinances requiring canvassers and solicitors to be fingerprinted as a condition for obtaining a license to operate in the municipalities burden their canvassers in the exercise of their First Amendment rights.⁹ Although the district court found that the fingerprinting requirement had interfered with

⁹ The citizens groups challenge the fingerprinting requirement under the Fourth Amendment as well. Although we are unable to discern precisely what they maintain in this respect, we presume that their argument is that fingerprinting under these circumstances constitutes an unreasonable search. Because we think the issue is more easily resolved under the First Amendment, we do not reach the citizens groups' Fourth Amendment contention.

appellants' ability to canvass, it upheld the regulation as "reasonably related to the defendant's [sic] interest in deterring, preventing or prosecuting crime." App. at 34.

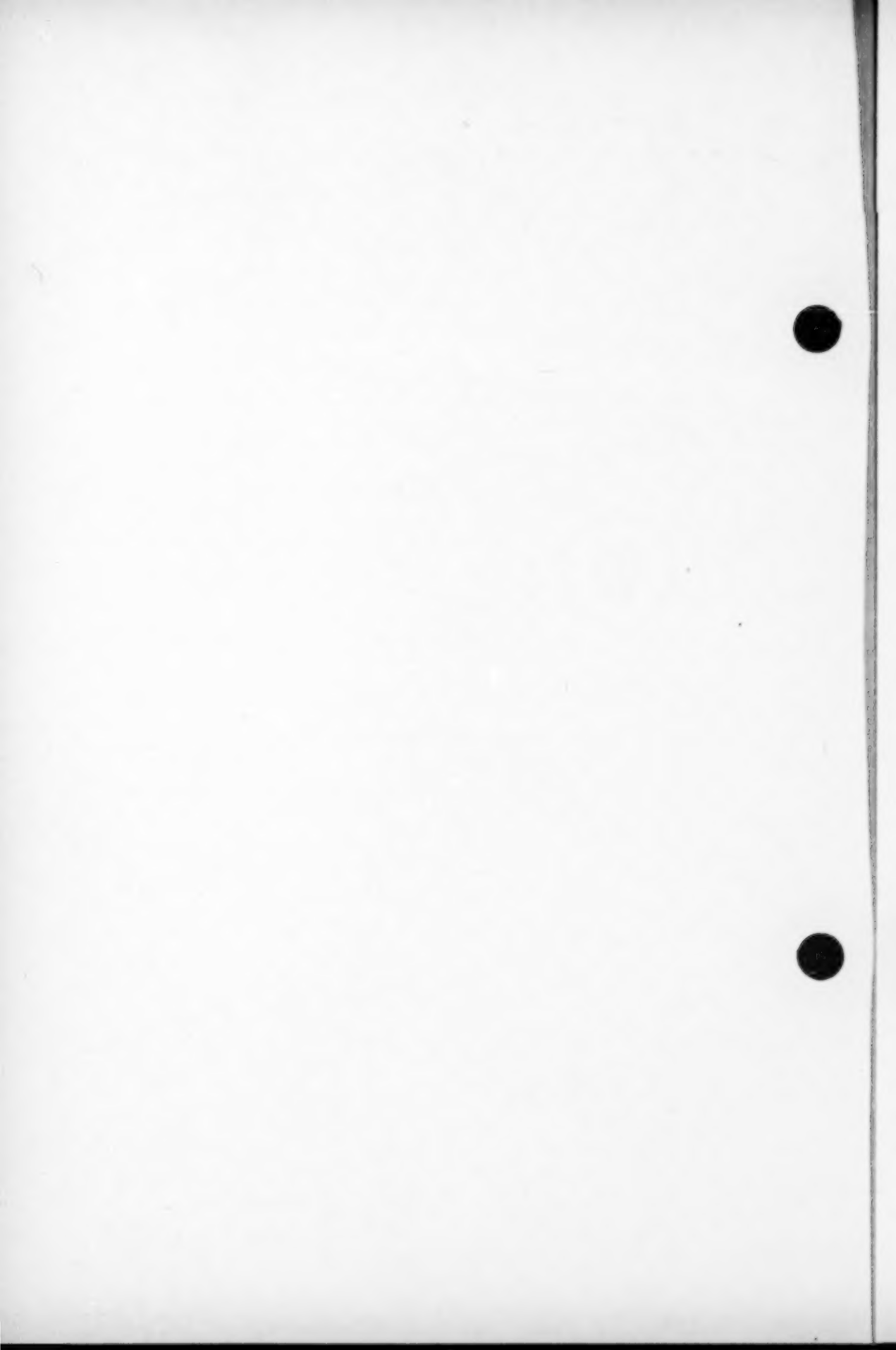
Neither party has cited us us to any case that directly considers the constitutionality under the First Amendment of a fingerprinting requirement for licensing of canvassers,¹⁰ and we have not been able

¹⁰ All of the cases cited by the parties relate to challenges arising in a criminal context or relying on other provisions of the Constitution. For example, the municipalities rely on Judge Weinfeld's decision in *Thom v. New York Stock Exchange*, 306 F. Supp. 1002 (S.D.N.Y. 1969), *aff'd.*, 425 F.2d 1074 (2d Cir.). *cert. denied*, 398 U.S. 905 (1970), where the court rejected a claim that a New York statute that required fingerprinting of all employees of member firms of national security exchanges was unconstitutional under the due

to find one.¹¹ Thus, this appears to

process clause, the equal protection clause, and the Fourth and Ninth Amendments. However, no claim was made that the fingerprinting rule burdened First Amendment rights. Other cases cited by defendants are also inapposite. See, e.g., *United States v. Kraph*, 284 F.2d 647 (3d Cir. 1961) (fingerprinting after a criminal conviction); *Walton v. City of Atlanta*, 181 F.2d 693 (5th Cir.) (challenge under equal protection clause) cert. denied, 340 U.S. 823 (1950); *State ex. rel. Mavity v. Tyndall*, 224 Ind. 364, 66 N.E. 2d 755 (1946) (criminal conviction), appeal dismissed, 333 U.S. 834 (1948) (per curiam) (dismissed for "want of a substantial federal question"); *Moyant v. Borough of Paramus*, 30, N.J. 528, 154 A.2d 9 (1959) (challenge under commerce clause); *McGovern v. Van Riper*, 137 N.J. Eq. 548, 45 A.2d 842 (1946) (criminal arrest); *Hamilton v. New Jersey Real Estate Commission, Department of Insurance*, 117 N.J. Super. 345, 284 A.2d 564 (App. Div. 1971) (challenge under Fourth, Ninth, and Fourteenth Amendments); *M. Itzkowitz & Sons, Inc. v. Geraghty*, 139 Misc. 163, 247 N.Y.S. 703 (1931) (no provision of Constitution specified).

¹¹ In *Wulp v. Corcoran*, 454 F.2d 826 (1st Cir. 1972), the First Circuit struck down an ordinance that required newspaper peddlers to obtain a license on the ground that the iden-



be a question of first impression.¹²

tification requirements burdened the exercise of First Amendment rights. The court referred to but did not discuss the police practice of fingerprinting applicants for such licenses. *Id.* at 282 n. 1. Also noteworthy is the court's opinion in *Genusa v. City of Peoria*, 619 F.2d 1203, 1216 (7th Cir. 1980), where the court invalidated a fingerprinting requirement for applicants for adult bookstore licenses.

The requirement of fingerprinting for employees of establishments serving liquor was upheld in *Iacobucci v. City of Newport*, 785 F.2d 1354 (6th Cir. 1986), but there the court noted that no fundamental constitutional rights were implicated. It relied on the cases upholding fingerprinting as a condition for those seeking business and professional licenses as precedent.

¹² We reject the district court's conclusion that PAJE "implicitly approved the constitutionality of a licensure provision which requires fingerprinting." App. at 35 (citing PAJE, 743 F.2d at 188 n.7). The footnote in PAJE on which the district court relied merely cited to the fingerprint requirement in a challenged municipal ordinance while

However, we are guided by two lines of

discussing the plaintiff's claim that the municipal ordinance granted municipal officials unfettered decision. The court did not discuss, much less "implicitly approve," the fingerprinting requirement.

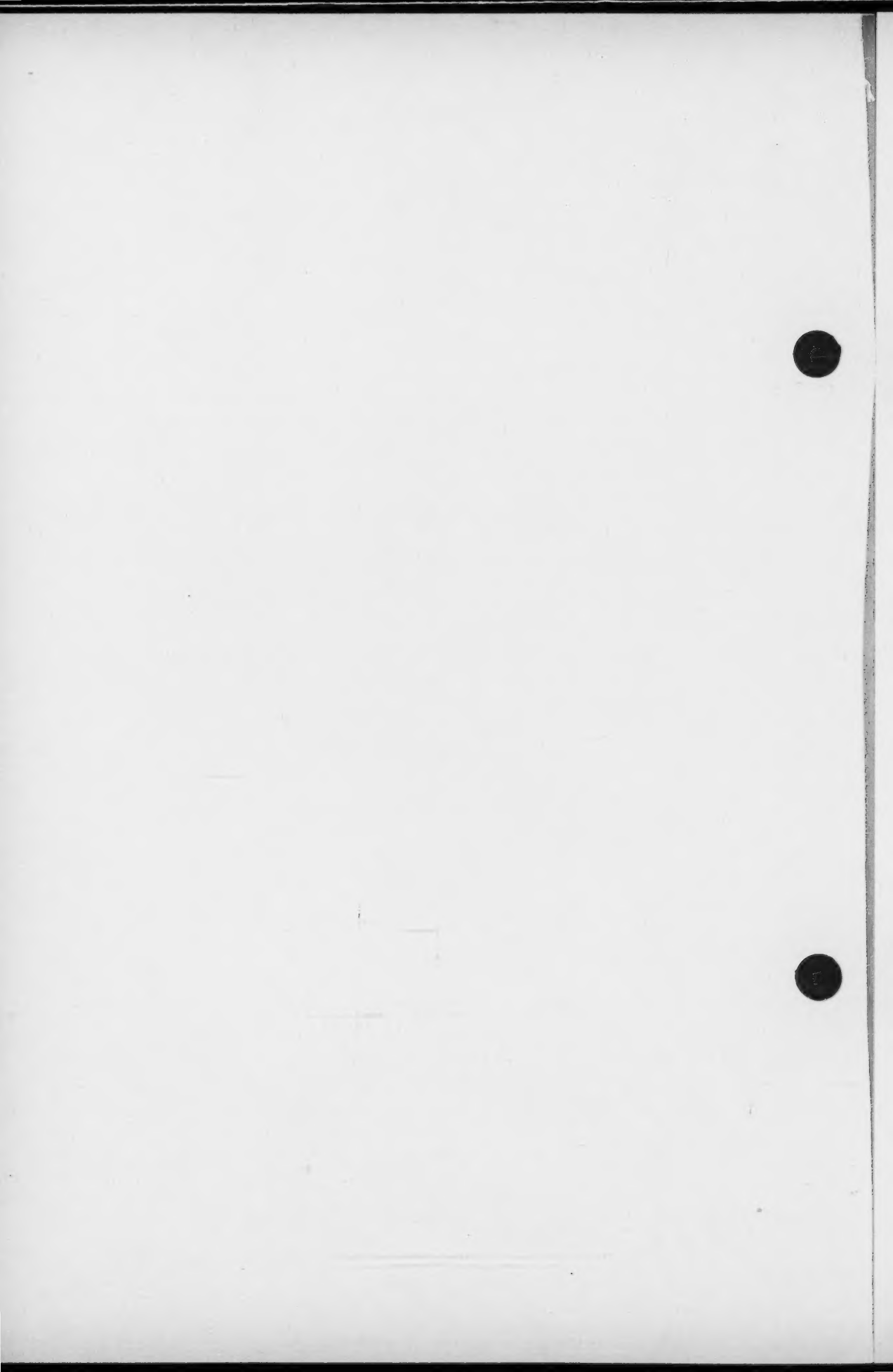
Also, the decision in Trade Waste Management Ass'n, Inc. v. Hughey, 780 F.2d 22 (3d Cir. 1985), to which the dissent refers, is inapposite here. In Trade Waste, we upheld a New Jersey law regulating the solid waste disposal industry which required, inter alia, certain officers and employees in the industry to file disclosure statements and submit to fingerprinting. The employees were working on garbage and trash, not exercising their First Amendment rights, and plaintiffs there did not assert that any First Amendment activities were burdened by the fingerprinting. Although we stated that fingerprinting is "personally intrusive", we held that the requirement did not unduly intrude on privacy rights, *id.* at 234, and relied essentially on cases upholding involuntary fingerprinting requirements under the Fourth Amendment, not the First Amendment.

cases in the Supreme Court; those in which the Court has considered regulations of canvassing, solicitation and distribution of literature, and those in which the Court has considered the effect of disclosure requirements on the exercise of rights protected by the First Amendment.

In decisions involving limitations on the right to canvass and solicit, the Court has made clear that a municipality can require some identification from canvassers as a condition to granting a license to operate within the city's boundaries. In *Martin v. City of Struthers*, 319 U.S. 141 (1943), Justice Black, writing for the Court, struck down a municipal regulation that prohibited anyone distributing handbills from knocking

on doors or ringing doorbells. The Court held that the ordinance was not tailored to serve the governmental interest in deterring crime, reasoning that there are other means of controlling and deterring crime that are less burdensome on a cherished First Amendment activity, *Id.* at 147-48. Specifically, the Court stated, "A city ... can by identification devices control the abuse of the privilege [to distribute literature to homeowners] by criminals posing as canvassers. *Id.* at 148 (footnote omitted); see also *Cantwell v. Connecticut*, 310 U.S. 296, 306 (1940).¹³

¹³ In *Breard v. Alexandria*, 341 U.S. 622 (1951), the Court upheld a municipal ordinance that prohibited commercial solicitors and peddlers from going on to private property without having been invited by the owner or resident of the property. The Court relied heavily on the commercial nature of the activity. Since then, the distribution between commercial and noncommercial speech has been narrowed. See *Village of Schaumburg*, 444 U.S. at 631-32 & n. 7. In any event, the solicitors here are not commercial in the sense used in *Breard*.



Later cases have held that door-to-door solicitation is subject to "reasonable regulation" without specifying what a municipality may require as a precaution to solicitation. See Village of Schaumburg, 444 U.S. at 632; Hynes v. Mayor of Oradell, 425 U.S. at 620. From these cases, it is apparent that a municipality may impose some type of licensing and identification procedure on those wishing to canvass. It is important to note that plaintiffs here, as door-to-door canvassers, are required by these ordinances to register in advance with the police, and to supply their names, addresses, telephone numbers, and identification, such as a driver's license. These are "requirements to which plaintiffs have absolutely no objections." Appellants' Brief at 46.

However, the Court has cautioned that regulations of solicitors and canvassers, including even identification requirements, involve a substantial risk of dampening the exercise of First Amendment activities. In *Talley v. California*, 326 U.S. 60 (1960), the Court struck down as facially unconstitutional a Los Angeles ordinance that required any handbill to contain the name of a person who wrote it and the name of the person who caused it to be distributed. The Court observed that requiring speakers to identify themselves was contrary to the tradition of anonymous pamphleteering in the United States, *id.* at 64-65, and held that there was "no doubt" that the identification requirement at issue "would tend to restrict freedom to distribute information and thereby freedom of expression."

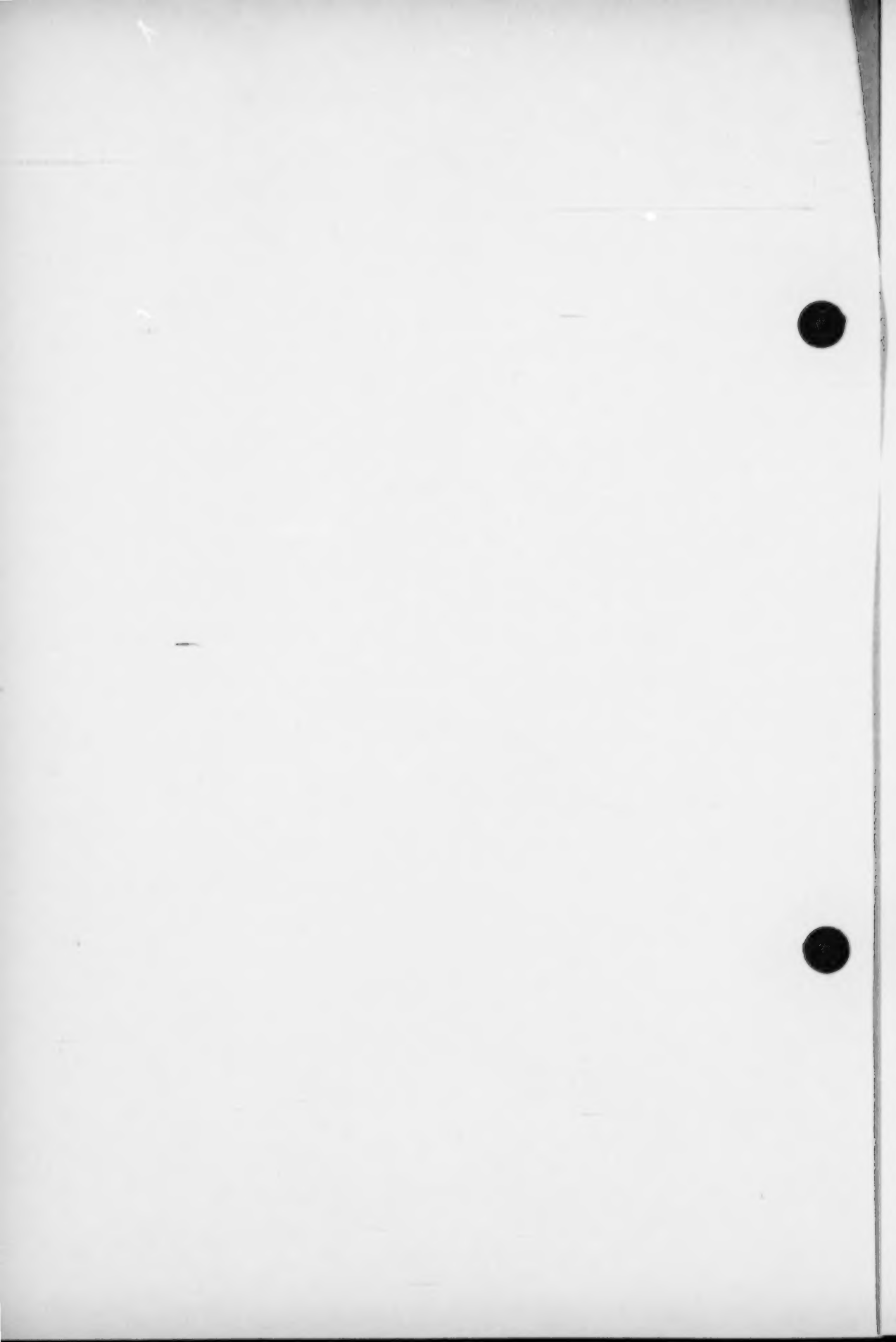
Id. at 64. See also *Schneider v. State (Town of Irvington)*, 308 U.S. 147, 164 (1939) (striking down on other grounds an ordinance, which, inter alia, required pamphleteers to under a "burdensome and inquisitorial examination, including photographing and fingerprinting").

In decisions outside of the area of solicitation and canvassing, the Court has stressed the dangers of regulations requiring disclosure of information as a precondition for engaging in First Amendment activities. In *National Association for the Advancement of Colored People v. Alabama*, 357 U.S. 449 (1958), the Court held that Alabama's demand that the NAACP reveal the names and addresses of all its rank and file members "entail[ed] the likelihood of a substantial restraint



upon the exercise by [the NAACP's] members of their right to freedom of association." *Id.* at 462; see also *Bates v. Little Rock*, 361 U.S. 516 (1960) (compulsory disclosure of membership lists "would work a significant interference with the freedom of association").

More recently, in *Buckley v. Valeo*, 424 U.S. 1 (1976) (*per curiam*), the Court considered the disclosure requirements of the Federal Election Campaign Act. The Act requires disclosure by political contributors and contributions. The Court held that such



"compelled disclosure" must be justified by a "substantial relation" between the governmental interest and the information required to be disclosed." *Id.* at 64 (citing *Gibson v. Florida Legislative Investigation Committee*, 372 U.S. 539, 546 (1963)). The Court reasoned "that significant encroachments on First Amendment rights of the sort that compelled disclosure imposes cannot be justified by a mere showing of some legitimate governmental interest." *Buckley v. Valeo*, 424 U.S. at 64.

The *Buckley* Court upheld the disclosure requirements at issue because it found that the actual impact of the statute on First Amendment rights was "highly speculative".



While these cases do not establish conclusively that the fingerprinting requirement at issue in this case is unconstitutional, they do demonstrate that when identification and disclosure requirements have been shown to burden First Amendment rights, the government must show that there is a substantial relation between the regulation and some legitimate and important state interest.

In this case, the district court found that the fingerprinting requirement directly affected the citizens groups in the exercise of their First Amendment rights. The court found that "[m]any of the canvassers for NJCA and [Conservation League] associate fingerprinting with criminality and consider such a requirement stigmatizing, and an inappropriate burden on their right to do political work." App. at 22. In one instance, NJCA was not able to canvass in a particular area after five of seven of its canvassers refused to submit to be fingerprinted because of the air of criminality about it. See App. at 22; 34. for 3/27 at 150-52. Further, the co-director of NJCA testified that "as a prac-

tical experience for canvassers, many canvassers will not be willing to be fingerprinted and, therefore, would not canvass." Tr. for 7/16 at 26. An NJCA supervisor stated fingerprinting requirements "make [] it more difficult for us to recruit people to canvass."

Tr. for 7/18 at 23. In another instance, Paramus Freeze was unable to canvass in Paramus because its volunteers refused to submit to a fingerprinting requirement. See App. at 22; Tr. for 3/27 at 24.

This testimony constitutes a showing of a substantial effect on the exercise of the citizens groups' First Amendment right to solicit and canvass. It was therefore error for the district court to hold that the fingerprinting requirements could be upheld if they were reasonably related to the state interests asserted. The burden placed on First Amendment activities by these ordinances required that they withstand more exacting scrutiny.

The district court found that the fingerprinting regulations were supported by the municipalities' interest in "deterring, preventing or prosecuting crime." App. at 34. As in the context of the regulation of the hours of solicitation, this interest is indisputably substantial. The court further found, based on defendants' expert testimony, that fingerprinting "acts as a crime deterrent." App. at 24. Finally, it would be difficult to dispute that fingerprinting of canvassers would be useful in the investigation of crimes in which a canvasser or solicitor was suspected of being involved.

However, the municipalities must not only show that there is an important state interest, but that there is a substantial relationship between that interest and the regulation. There has been no showing that canvassers and solicitors have a significant history of criminal behavior.

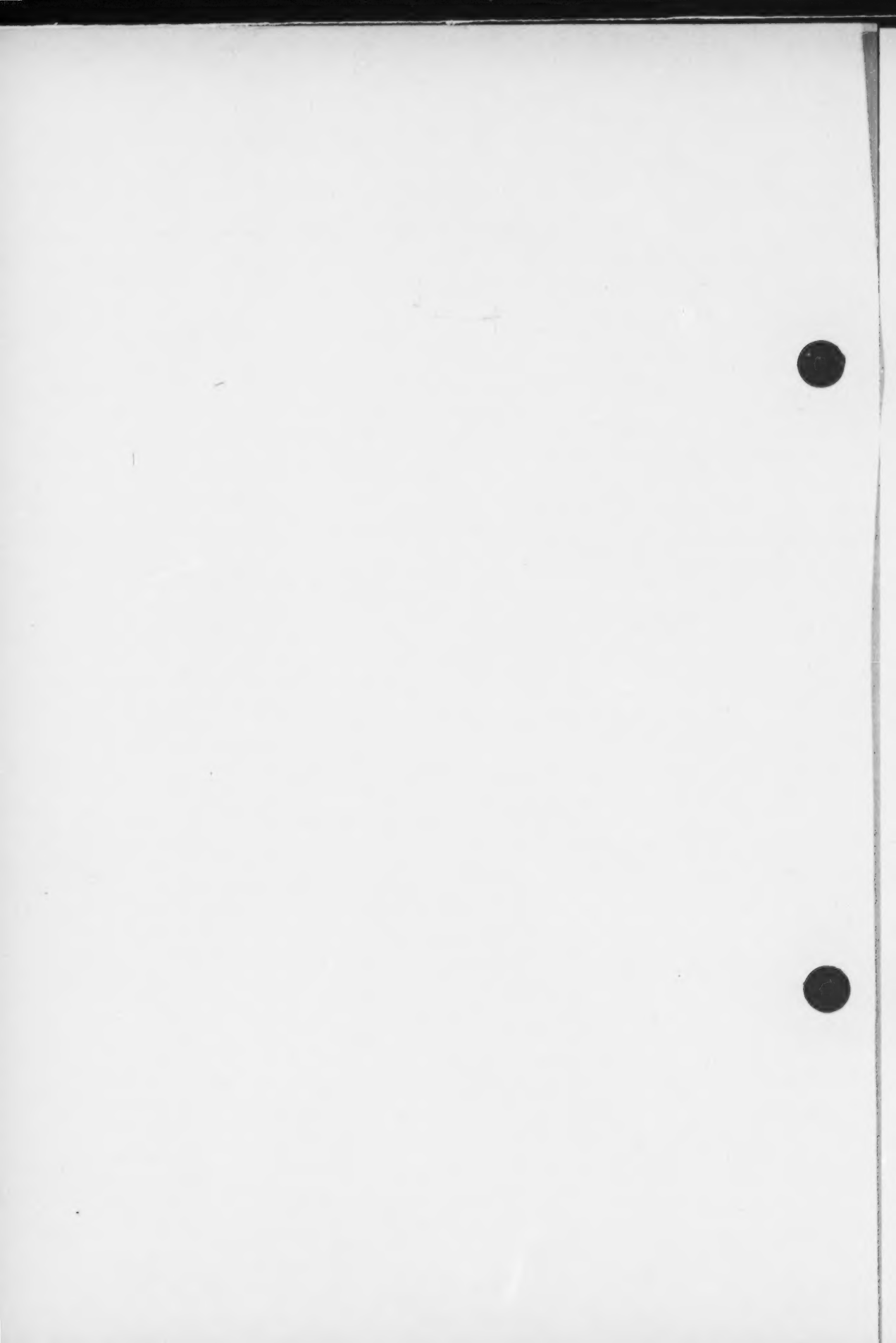
The district court has already found that solicitation and canvassing are the only adequate means available to these plaintiffs to spread their message. Defendants' assertion



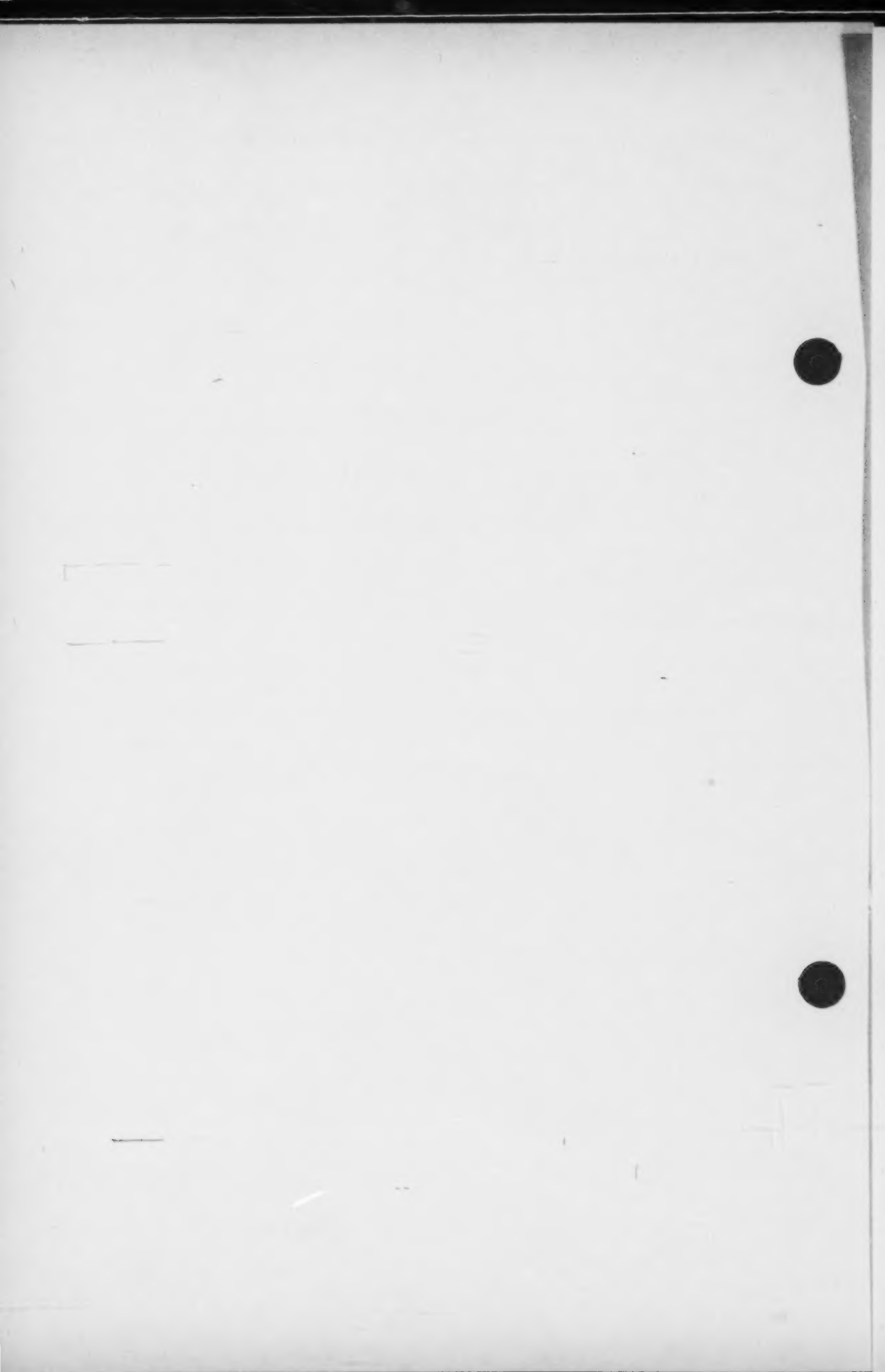
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that fingerprinting is no longer stigmatizing is belied by the record that shows that the fingerprinting requirements effectively prevent the plaintiff organizations from espousing their causes to the residents of the municipalities in question. Thus, the burden on First Amendment activity caused by the fingerprinting requirements is simply too heavy to pass constitutional muster in light of the absence of a particularized showing of the needed relationship between the fingerprinting and the asserted state interests.



Judge Weis belittles the plaintiffs' objections as involving only "a matter of personal distaste." Dissenting Typescript Op. at 11. However, just as a government could not require a street corner orator or a political pamphleteer to be fingerprinted, it may not, under these circumstances, require solicitors and canvassers to be fingerprinted. We therefore hold that the challenged municipal ordinances may not be constitutionally applied to these plaintiffs.



CONCLUSION

Decisions involving the First Amendment often require difficult adjustments of the rights of individuals and the legitimate aims of government. See *Niemotko v. Maryland*, 340 U.S. 268, 275 (1951) (Frankfurter, J., concurring). This case involves two such decisions. Although we are mindful that municipalities must have some latitude to protect the interests of their residents, we conclude that this is a case in which efforts to do so have trespassed upon one of the most cherished of constitutional rights. Thus, for the reasons set forth above, we hold that, on the basis of the district court's

findings that the time restrictions on canvassing do not deter or prevent crime and that the plaintiffs do not have meaningful alternatives to evening canvassing, the defendant municipalities cannot constitutionally forbid plaintiffs from engaging in canvassing and solicitation before 9 p.m., the time period challenged in this case. We further hold that the challenged fingerprinting regulations violate the First Amendment. The order of the district court will be reversed, and the matter remanded for further proceedings consistent with this opinion.

WEIS, Circuit Judge, dissenting.

The panel procedure used by this and other courts of appeals has proved a highly efficient and intensely practical method of coping with ever-increasing caseloads. However, because appeals are heard by less than a majority of the court, there exists the danger of inconsistency in rulings by different panels. To minimize this risk, a variety of practices have been implemented including circulating opinions to all judges of the court before filing and convening in banc hearings.

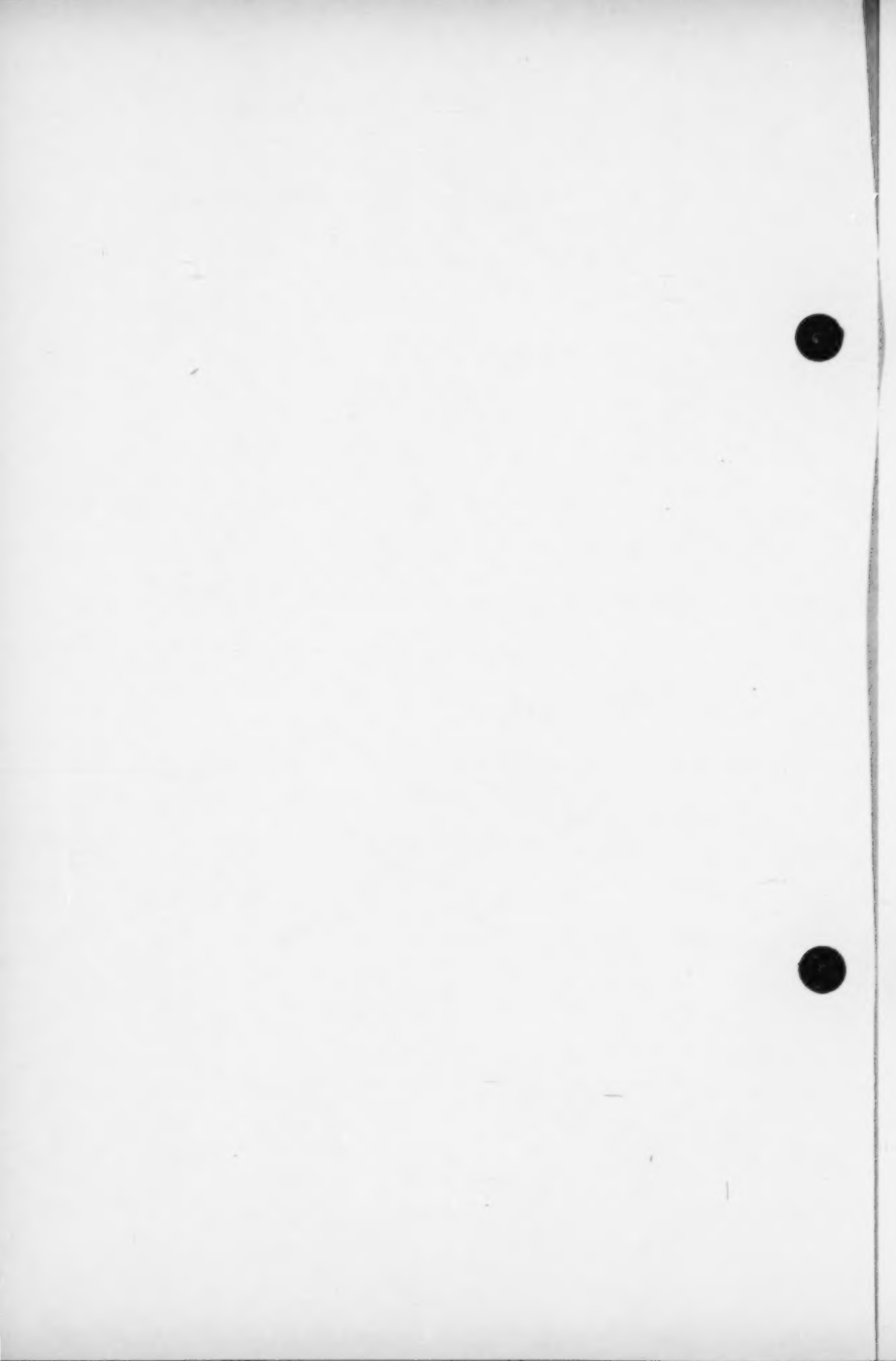
This court has taken the important step of adopting an Internal Operating Procedure, I.O.P. 8C, declaring the published opinions of a panel binding on all later panels. The overruling of a decision may be accomplished only by a later opinion of the United States Supreme Court or decision of this court sitting in banc.¹ Because I believe that the majority opinion here violates this mandate, I must dissent.

¹ See United States v. Babich, 785 F.2d 415 (3d Cir. 1986); Goodman v. Lukens Steel Co., 777 F.2d 113 (3d Cir. 1985).

The dual interests of crime prevention and privacy are legitimate community concerns justifying reasonable time, place, and manner restrictions on the exercise of some First Amendment rights. Such regulations must be precisely drawn to serve the interest they are designed to further and must preserve adequate alternative channels of communication.

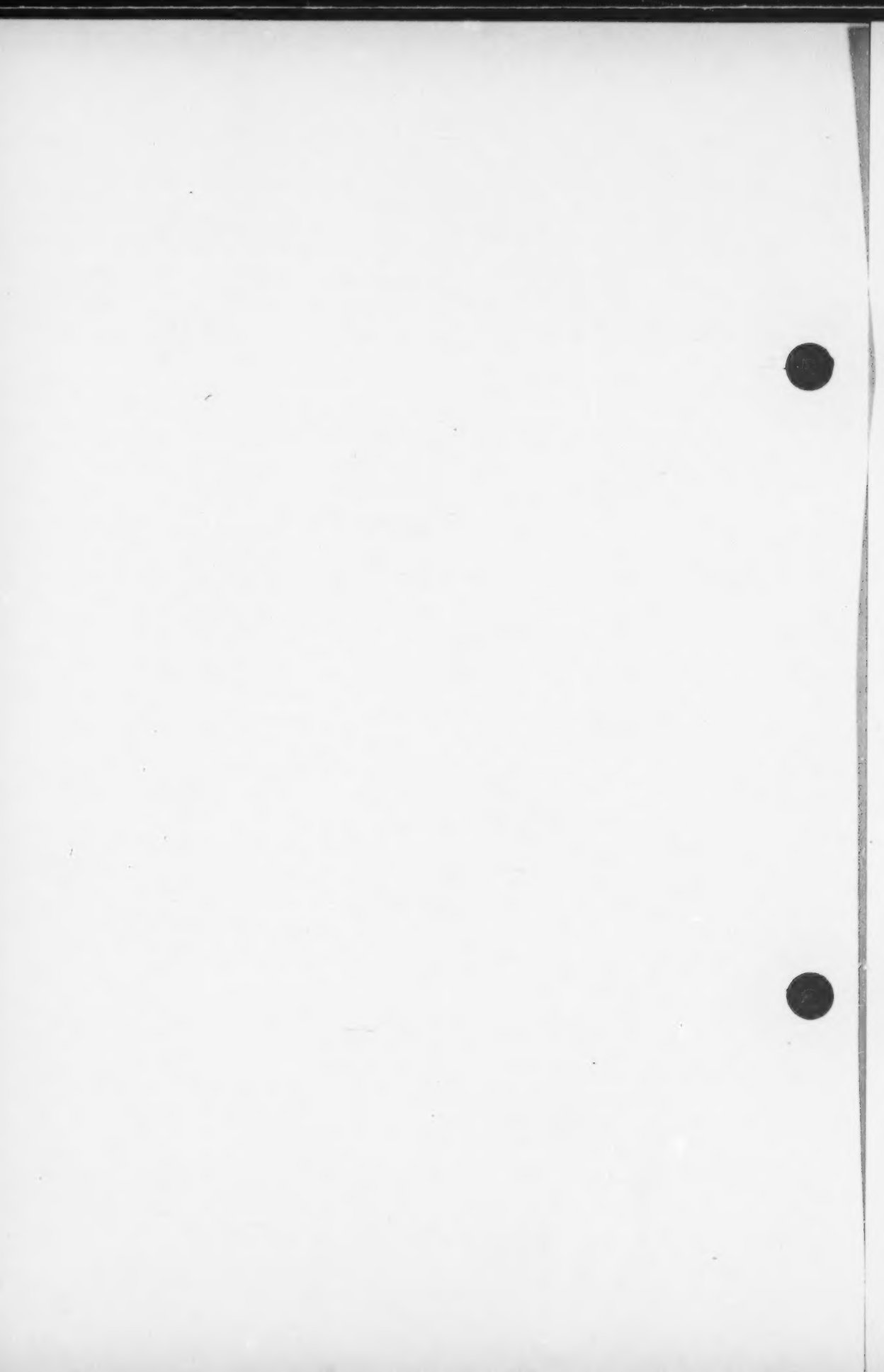
Secretary of State of Md. v. Joseph H. Munson Co., Inc., 467 U.S. 947 (1984).

In *Pennsylvania Alliance for Jobs and Energy v. Council of the Borough of Munhall*, 743 F.2d 182 (3d Cir. 1984), a panel of this court ruled that time, place and manner restrictions almost identical to those at issue here pass constitutional muster. As support for limitations on canvassing, the panel in that case relied on certain propositions -- that canvassers often use their



activity as a reconnaissance to identify likely targets for burglary, and that homeowners do not desire intrusions during evening hours.

These premises have been stated as facts in several Supreme Court opinions. In *Martin v. City of Struthers*, 319 U.S. 141, 144 (1943), the Court said, "burglars frequently pose as canvassers, either in order that they may have a pretense to discover whether a house is empty and hence ripe for burglary, or for the purpose of spying out the premises in order that they may return later." In *Hynes v. Mayor of Oradell*, 425 U.S. 610, 619 (1976), the Court quoted with approval Professor Chafee's work, stating that "[o]f all the methods of spreading unpopular ideas, [house-to-house canvassing] seems the least entitled to extensive protection. The possibilities of persua-



sion are slight compared with the certainties of annoyance. Great as is the value of exposing citizens to novel views, home is one place where a man ought to be able to shut himself up in his own ideas if he desires."

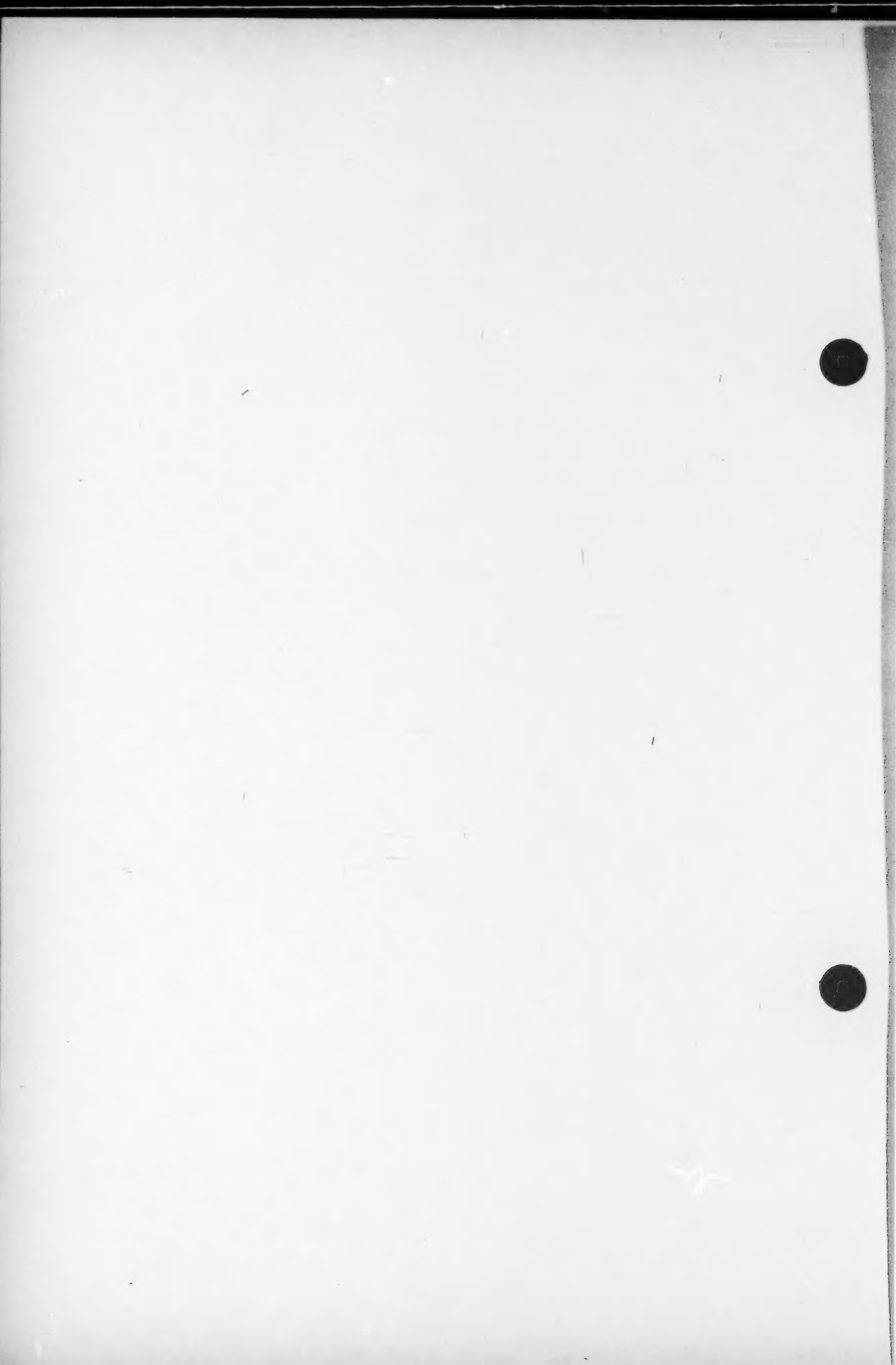
In Pennsylvania Alliance, we said:

"That unregulated canvassing poses a risk of crime is well known. ... The local authorities' task of detecting and preventing burglary would clearly be more difficult if strangers to their communities were permitted to roam from house to house after

dark." 743 F.2d at 187. We noted further that privacy interests are "clearly promoted by regulations that protect persons from the annoyance of coping with uninvited solicitors at the dinner hour and in the evening." Id.

Observing that the ordinances under consideration permitted "personal solicitation in other forums, such as parks and shopping districts, or ... proselytizing by telephone or mail," id. at 188, we also concluded that these communicative outlets offered adequate alternatives.

In the case at hand, the district court determined, on the basis of evidence presented, that time restrictions on canvassing do not prevent crime in the defendant municipalities. On the privacy issue, the court did not reach a firm conclusion, noting only that the "factual record is somewhat more balanced." The district court also found that plaintiffs have no meaningful alternatives to evening canvassing." These findings contrast sharply with the conclusions in Pennsylvania Alliance. Despite its differing factual findings, however, the district court properly considered itself bound by our earlier ruling.



The question arises whether the district court in this case or the Supreme Court in its earlier cases has made the correct "factual findings". On issues like these, touching on the necessity and utility of regulating free speech, answers will usually be subject to debate no matter how many statistical studies may be offered in support of the countervailing arguments.

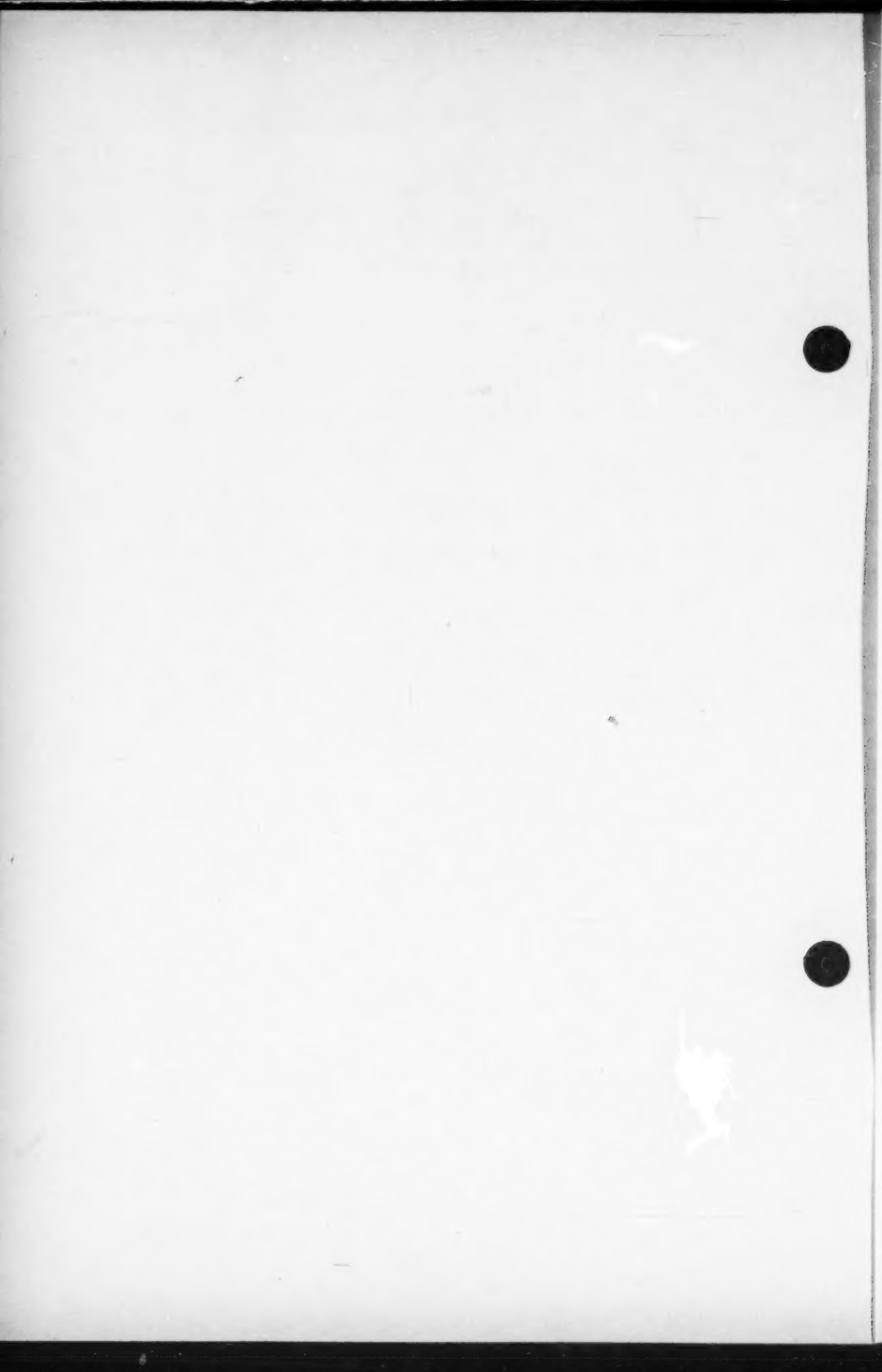
Difficulties arise when courts fail to distinguish historical or narrative facts, "which are definite, fixed, and case-specific, from the body of assertions sometimes

characterized as "constitutional facts."

The latter are frequently unproven (and often unprovable) generalizations that, once made part of the caselaw, take on a life of their own and have influence beyond the cases in which they are made. Such facts are sometimes little more than assumptions or widely-held beliefs, which do not have the definitiveness associated with narrative facts.²

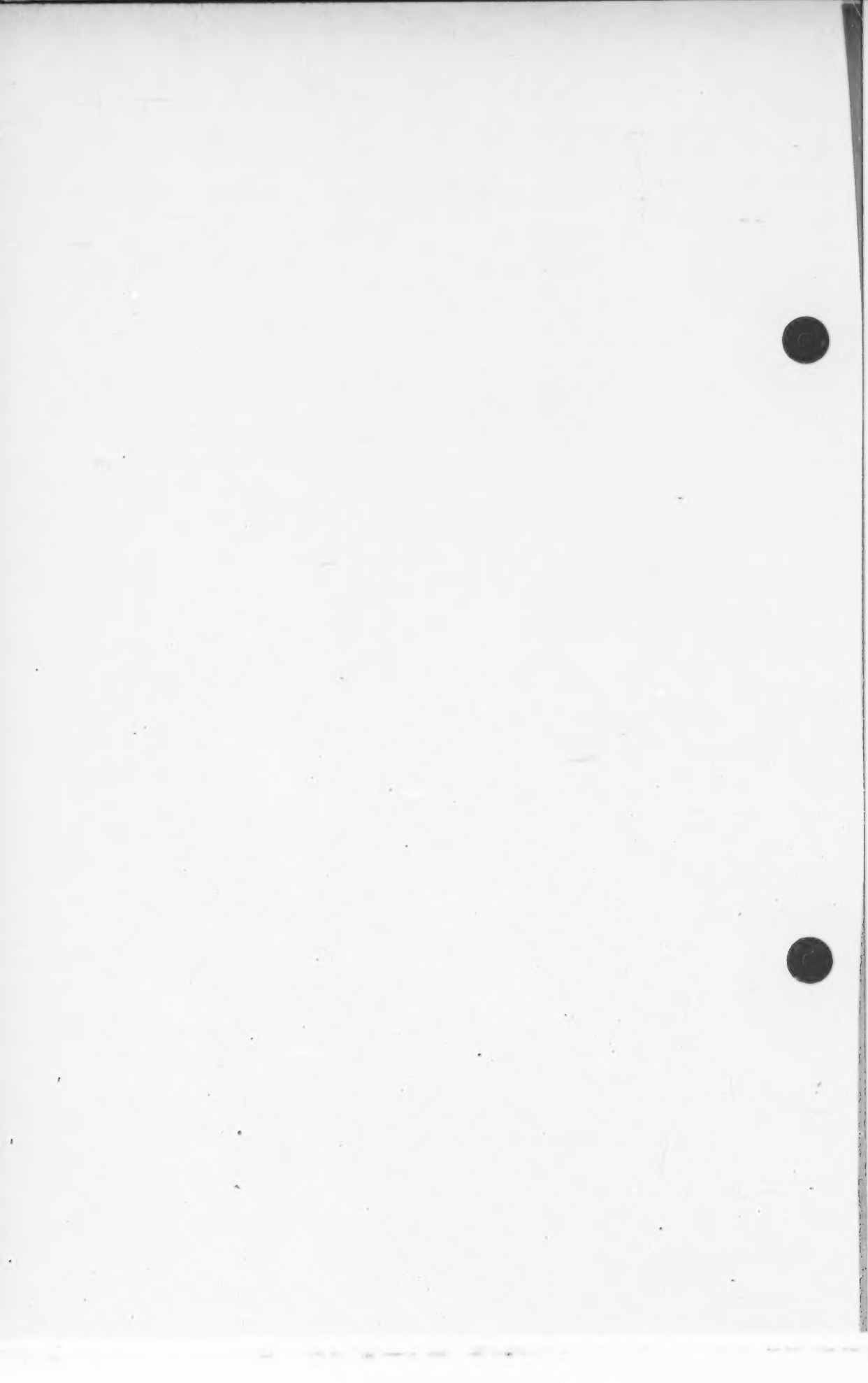
² For discussions of the significance of "constitutional facts," see Aldisert, the Judicial Process, 703; Davis, Administrative Law Treatise §15.03; Karst, Legislative Facts in Constitutional Litigation, 1960 Sup. Ct. Rev. 75; Shaman, Constitutional Fact; The Perception of Reality by the Supreme Court, 35 U. Fla. L. Rev., 236 (1983); Alfange, The Relevance of Legislative Facts in Constitutional Law, 114 U. Pa. L. Rev. 637 (1966).

The majority is uncomfortable with my frank characterization of some constitutional facts, and my belief that in constitutional cases judges are frequently called upon to exercise judgment in predicting the relative effectiveness of legislation in the absence of any conclusive proof of underlying assumptions. But only candor about this aspect of the judicial function can neutralize the charge, leveled by some, that "manipulation" or constitutional facts from case to case "provides a facade for ... constitutional decisions." Shaman, 34 U.Fla.L.Rev. at 253; see also Aflange, 114 U.Pa.L. Rev. 637.



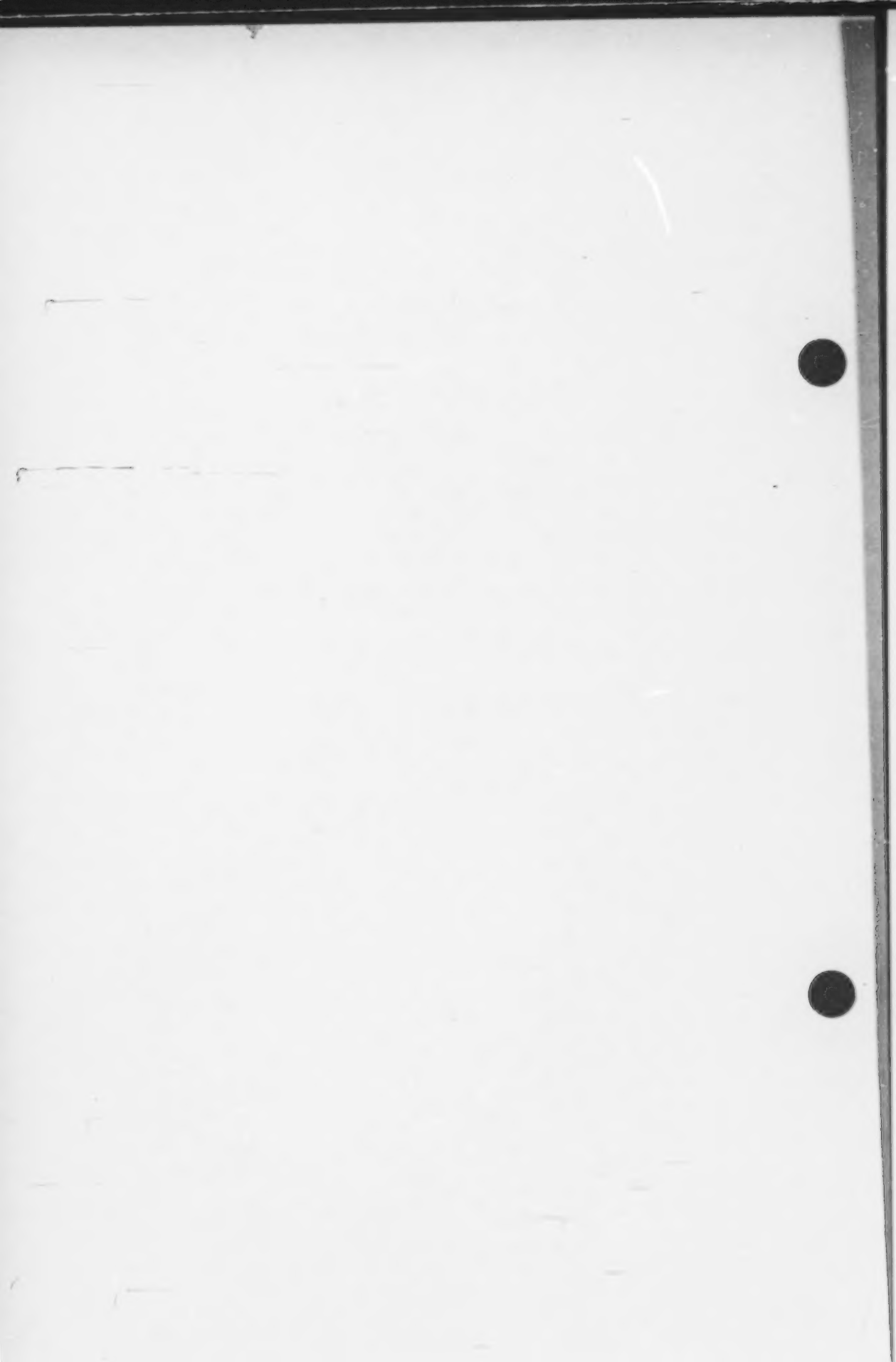
That the circumstances in different cases may lead to differing results is common enough when the facts are historical, narrative, or adjudicatory, since those various labels apply to "facts" pertaining explicitly to the parties before the court. For example, in this case the rate of pay received by canvassers and the number of hours they work are adjudicatory facts.

But legislative or constitutional "facts" often play a more crucial role in the judicial process. Whether unregulated conduct of canvassers during the evening hours actually increases the incidence of crime is a matter of constitutional fact. In *City of Struthers*, the Supreme Court found that canvassing did



increase crime basing its conclusion on a number of studies. The Pennsylvania Alliance case adopted these findings and added its own.³ On the evidence it heard, however, the district court here disagreed. Similarly,

³ The majority argues that the Supreme Court's findings of constitutional fact in *Hynes v. Mayor of Oradell* and *Martin v. City of Struthers* should not be followed because in those cases the Court invalidated the attempted regulation of first amendment rights. This precise argument was put forward by the dissent in *Pennsylvania Alliance* and was rejected by the majority in that case. See 743 F.2d at 190-91. Thus, in its significant aspects the dissent in the *Pennsylvania Alliance* panel has become the opinion of the majority here.



the finding that homeowners desire privacy in the evening hours is a constitutional fact, which the district court questioned despite the views of both the Supreme Court and the Pennsylvania Allilance panel.

Constitutional facts are necessarily generalized, in the nature of predictions, and are not limited to any one case. This court's deference in Pennsylvania Alliance to the Supreme Court's observation about burglars often posing as canvassers illustrates that the validity of a constitutional fact, unlike that of an adjudicatory fact, is not confined to the specific dispute under consideration.

That is not to say that constitutional facts may not be disregarded as faulty in later adjudications. The findings of the

Supreme Court in *Brown v. Board of Educ.*, 347 U.S. 483 (1954), invalidating those in *Plessy v. Ferguson*, 163 U.S. 537 (1896), are a dramatic example of that process. When judges, legal scholars, and lawyers speak of *Brown's* effect, however, they cite it as the case which overruled *Plessy v. Ferguson*, not simply as a decision in which the facts of the particular case shown racial separation to be unequal in the particular circumstance.

⁴ See, e.g., Pollak, *Racial Discrimination and Judicial Integrity*, 108 U.Pa.L.Rev. 1 (1959)!

The constitutional facts supporting a rule or doctrine must necessarily carry precedential weight so that governments will be able to predict the validity of their regulatory actions. Thus, in large part the longevity of constitutional facts may be attributed to the doctrine of stare decisis and the important purposes that principle serves. The Supreme Court recently admonished that "any detours from the straight path of stare decisis in our past have occurred for articulable reasons, and only when the Court has felt obliged 'to bring its opinions into agreement with experience and with facts newly ascertained.'" *Vasquez v. Hillery*, ___ U.S. ___, 54 U.S.L. 4068, 4072 (Jan. 14, 1986). Clearly, in the court's view, reconsideration of constitutional facts in light of experience occurs in the deliberate process of overturning constitutional precedents.

A degree of generalization about the permissible range of governmental response to a given problem is necessary to avoid endless litigation of these issues. Once the courts have answered the question, municipalities should be able to rely on the constitutional fact that regulating canvassers is a legitimate measure for the prevention of crime. In *City of Renton v. Playtime Theatres, Inc.*, ___ U.S. ___, 54 U.S.L.W. 4160, 4163 (Feb. 25, 1986), the Supreme Court used such an approach:

"We hold that Renton was entitled to rely on the experience of Seattle and other cities ... in enacting its adult theatre zoning ordinance. The First Amendment does not require a city, before anacting such an ordinance, to conduct new studies or to produce evidence independent of that already generated by other cities, so long as whatever evidence the city relies upon is reasonably believed to be relevant to the problem that the city addresses."

Although it concedes the need for stability and consistency, the majority has articulated an approach that will require municipalities to make fundamental policy decisions on an ad hoc basis.

This case presents a clear conflict on three constitutional facts -- whether these regulations will prevent crime, protect privacy, and leave open adequate alternative forums of communications. The conflicts between this case and Pennsylvania Alliance cannot and should not be reconciled by this panel; that is reserved for the full court.

The majority's response to my dissent on this phase of the case is largely misdirected. I have no hesitancy in acknowledging that facts play a crucial role in constitutional adjudication, and I agree that this court's prior decision has not foreclosed any further litigation of the issues. My concern is primarily an institutional one -- that such reexamination proceed within the framework established by this court's Internal



Operating Procedures. The majority's blithe assumption that its opinion can coexist with Pennsylvania Alliance without causing confusion, I believe, is unrealistic and undermines the purposes for which the Internal Operating Procedures were instituted.

.Inevitably, if the majority's opinion stands, the result will be uncertainty among the district courts in this circuit as to the governing constitutional facts in cases of this nature. Rather than reverse the district court, the majority should submit this case to the full court to determine

whether the matter should be heard in banc. The reversal here is contrary to this court's Internal Revenue Procedures and frustrates the goal of preventing conflicts between panel decisions. For that reason, I cannot join in the majority's opinion. Because I am convinced that the matter should be resolved by the full court, I take no position on the merits

of the panel majority's reasoning in the abstract.⁵

⁵ City of Watseka v. Illinois Public Action Council, No. 84-2605 (7th Cir. July 18, 1986), is not contrary to my position because the opinion in that case did not discuss the significance of constitutional facts. The fact that the panel felt the need to distinguish an earlier decision of the court illustrates my concern that the district courts would be required to choose between inconsistent opinions of the court of appeals of their circuit.

I do dissent, however, from the holding that the fingerprint requirement is unconstitutional. The majority does not dispute that the substantial interest in deterring crime justifies some type of identification procedure. The cases cited in which the Supreme Court sustained a First Amendment challenge are those where identification per se was the issue. For example, *Brown v. Socialist Workers '64 Campaign Committee*, 459 U.S. 87 (1982), held that mere disclosure of membership in the Socialist Workers party was a substantial infringement of associational rights under the circumstances.

Since plaintiffs here concede that identification may be required, the constitutional question centers on the legitimacy of the means chosen by defendants. Members of the plaintiff organizations have stated their belief that an air of criminality surrounds the fingerprinting process. Perhaps that may have been true at one time; however, millions of persons have been fingerprinted as a routine procedure on entering the armed forces in the last 50 years. That circumstance belies any valid belief that only criminals are subject to this procedure.⁶

⁶ Other benign uses of fingerprinting might be cited. For example, some local communities have instituted fingerprint procedures as a means of identifying and protecting young children.

This court recently upheld against asserted constitutional privacy interests a fingerprint requirement as part of a state regulatory scheme. *Trade Waste Management Assn., Inc. v. Hughey*, 780 F.2d 221, 234 (3d Cir. 1985). There we said, "[fingerprinting] is required only as a condition for obtaining or keeping a license to engage in a business that the state may license. It is, moreover, rationally related to the investigation of the qualifications of licensees."

Here, the plaintiff's objections resolve into no more than a matter of personal distaste for the fingerprint requirement. But the district court found the procedure an effective means of promoting the municipal interest in deterring crime. Some canvassers might have similar personal objections to producing a driver's license, photograph, or other identification. Their preferences would not be honored in that instance and should not be given any greater weight here.

In a positive vein, fingerprinting may well remove suspicion from a canvasser at a preliminary stage. In investigating a burglary, if the police discover prints that are not those of canvassers, investigations more intrusive than the brief and simple procedure of supplying the prints will be headed off.

The majority states that the fingerprinting of a "street corner orator" would be impermissible under the first amendment. But the rights of those exercising the prerogative of political speech in a traditional public forum are not those presented here. Pennsylvania Alliance made clear from the outset that regulation of door-to-door canvassing does not implicate the public forum doctrine. The canvassers here, who are employees trained and paid for their work, are more like the waste collectors in Hughey, who could be fingerprinted, than the political stump speaker example cited by the majority.

The fingerprinting requirement affects the privacy interests of the individual canvassers most directly. The First Amendment rights of New Jersey Citizen Action, plaintiff here, are implicated only in a tangential way because some canvassers have indicated that they will not continue to work if fingerprinting is required. In that sense, the force of the first amendment argument asserted here is tied to the strength of the underlying privacy concerns of the individual canvassers. But under Hughey, those interests are not strong enough to invalidate the municipalities' reasonable non-intrusive fingerprinting requirement.

In sum, the majority's reversal of the district court order directly contradicts the holding of a prior published opinion of this court. I am unable to join in such a result, but would vote for in banc consideration to resolve the substantial division in this court. Furthermore, because the non-intrusive process of fingerprinting is fully justified by the municipal interests at stake, and is also supported by a previous panel decision, I dissent from the majority's holding that such a requirement is unconstitutional.

A True Copy:

Teste:

Clerk of the United States Court
of Appeals
for the Third Circuit

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

NO. 85-5321

NEW JERSEY CITIZEN ACTION AND
THE NEW JERSEY LEAGUE OF
CONSERVATION VOTERS,

Appellants,

v.

EDISON TOWNSHIP, GLEN RIDGE
TOWNSHIP, HARRINGTON PARK BOROUGH,
NORTH ARLINGTON BOROUGH, TOWN OF
NUTLEY, PARAMUS BOROUGH, PISCATAWAY
TOWNSHIP, ROSELAND BOROUGH,
WOODBIDGE TOWNSHIP and WOODCLIFF
LAKE BOROUGH

PARAMUS CITIZENS FOR A NUCLEAR
WEAPONS FREEZE,

Plaintiff Intervenor

v.

PARAMUS BOROUGH,

Defendant

SUR PETITION FOR REHEARING

Present: ALDISERT, Chief Judge, SEITZ,
ADAMS, GIBBONS, WEIS, HIGGINBOTHAM,
SLOVITER, BECKER, STAPLETON and
MANSMANN, Circuit Judges, and
POLLAK, District Judge*

The petition for rehearing filed by
Plaintiff Intervenors, PISCATAWAY TOWNSHIP,
WOODBRIIDGE TOWNSHIP, NORTH ARLINGTON BOROUGH,
PARAMUS BOROUGH and WOODCLIFF LAKE BOROUGH
in the above-entitled case having been sub-
mitted to the judges who participated in the
decision of this court and to all other
available circuit judges of the circuit in
regular active service, and no judge who
concurred in the decision having asked

* Hon. Louis H. Pollak, United States District
Court for the Eastern District of Pennsyl-
vania, sitting by designation.

3.

for rehearing, and a majority of the circuit judges of the circuit in regular active service not having voted for rehearing by the court in banc, the petition for rehearing is denied. Judges Weis and Stapleton would grant rehearing.

By the Court,

/s/ Dolores K. Sloviter
Judge

Dated: September 25, 1986

-113a-

NOT FOR PUBLICATION

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY
CIVIL ACTION No. 84-745

NEW JERSEY CITIZENS ACTION :
and THE NEW JERSEY LEAGUE OF :
CONSERVATION VOTERS, :

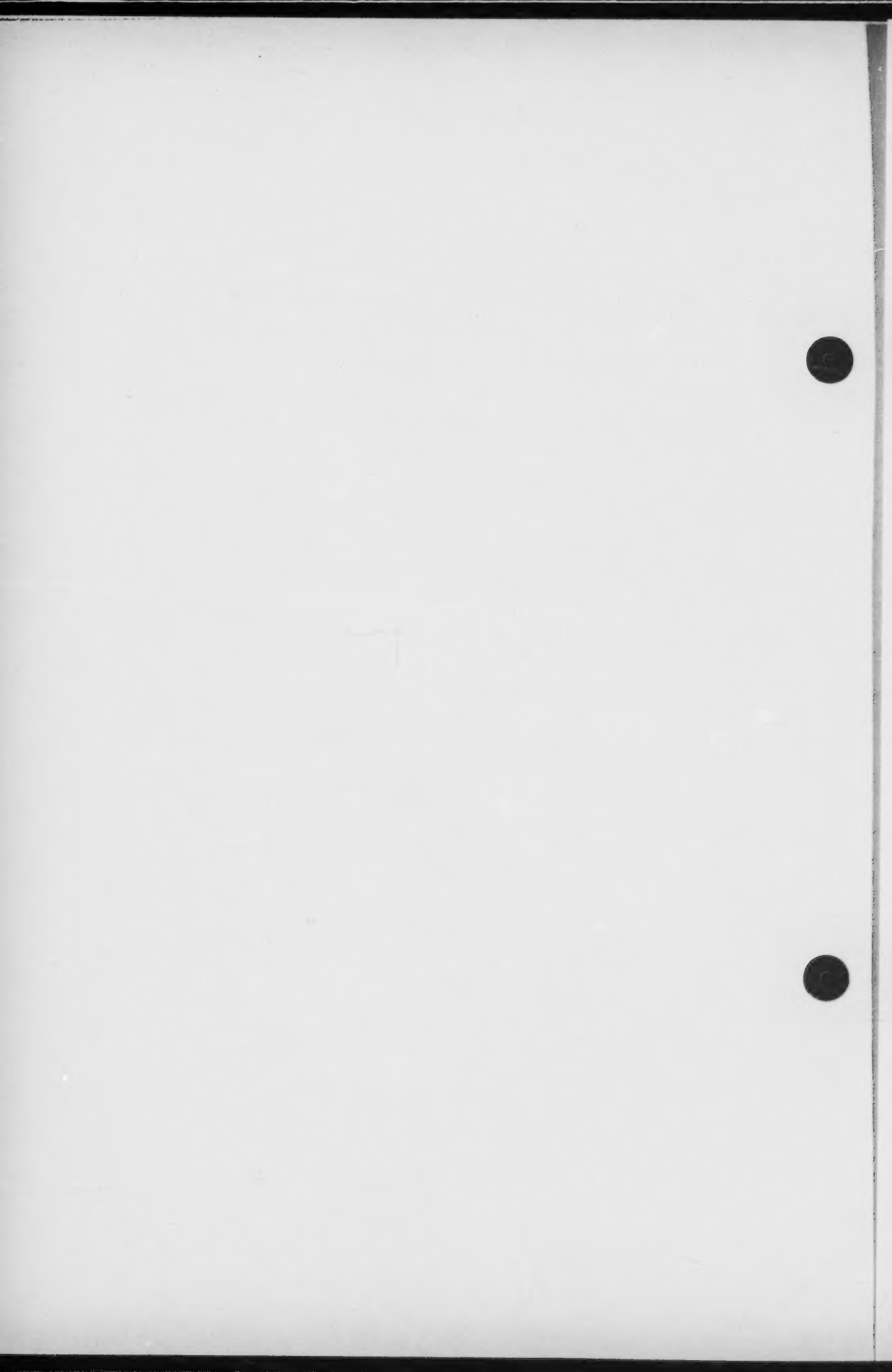
Plaintiff, : OPINION

-vs- :

EDISON TOWNSHIP, GLEN :
RIDGE TOWNSHIP, et al. :
_____ :

ACKERMAN, District Judge.

This is an action for damages and injunctive relief. Plaintiffs are various political organizations described infra. They allege that defendants, various townships in the state of New Jersey, have violated their rights to freedom of speech guaranteed under the United States and New Jersey Constitutions



2.

through the enactment and enforcement of certain municipal ordinances regulating door-to-door canvassing activities.

By order dated February 29, 1984, defendant Woodbridge Township was temporarily enjoined from enforcing Article 7 of the Revised Ordinances of Woodbridge and from interfering with certain door-to-door canvassing activities of plaintiff, New Jersey Citizens Action (NJCA). Pursuant to Rule 65 of the Federal Rules of Civil Procedure, hearings were held on March 27, April 13, July 16, 17 and 18 of 1984 in which this court, merging plaintiffs' application for preliminary injunctive relief with a trial on the



merits, heard testimony pertinent to the equitable relief sought in the instant action. All issues raised by plaintiffs' claims for money damages were bifurcated and not further considered by the court in these proceedings.

After hearings were commenced, but before they were completed, this court permitted Paramus Citizens for Nuclear Weapons Freeze (PCNWF) to intervene as a plaintiff, see order dated April 4, 1984, and temporarily restrained defendant Borough of Paramus from enforcing Chapter 21, Section 11 of its Revised Ordinances as well as Ordinance 80-7 against plaintiff-intervenor. Further, by opinion rendered June 27, 1984 and order dated July 3, 1984, on cross motions for partial summary judgment by plaintiffs and defendant Township of Edison, this court issued a

declaratory judgment to the effect that Chapter 34 of the Code of the Township of Edison is not applicable to non-commercial house-to-house solicitation and in particular to such solicitation by persons and organizations engaging in non-profit and political activities such as the plaintiffs herein. It was further ordered that liability for damages, costs and attorneys fees was the only remaining issue with regard to this defendant. On July 3, 1984, a stipulation and order was filed to the same effect regarding Glen Ridge Ordinance No. 704. Finally, on August 17, 1984, plaintiffs moved to amend their complaint and for certification of a defendant class under Federal Rule of Civil Procedure

23. However, rather than await this court's ruling on these motions, plaintiffs filed a new lawsuit against twenty-five additional townships, New Jersey Citizen Action v. Alpine Borough et al., No. 84-3774, on September 13, 1984 asserting the identical claims asserted herein.

On September 17, 1984, an order to show cause was filed in the Alpine Borough case and on September 28, plaintiff's request for temporary restraints in that case was denied in large part on the authority of the Third Circuit's opinion in Pennsylvania Alliance for Jobs and Energy et al. v. Council of the Borough of Munhall et al., 743 F.2d 182 (3d Cir. 1984). Since that time the Alpine Borough case was dismissed by order of this court dated March 1, 1985.

Since the completion of the trial in the instant case and the submission on December 11, 1984 of the final proposed findings of fact and conclusions of law, the parties have awaited this court's decision on the merits of plaintiff's claims for equitable relief.

During the five days of hearings, plaintiffs presented the testimony of Richard Kirsch, co-director of NJCA; Lynne Brown, canvass director of NJCA; Diane Brady, an NJCA canvasser; Amy Little, director of NJCA's Hackensack office; Mark Herzberg, director of The New Jersey League of Conservation Voters (LCV); Aaron Fish, coordinator of PCNWF; O'Brien Boldt, canvass coordinator for Freeze Voter '84; Lt. Thomas Huestis, assistant bureau

chief of the New Jersey State Police, Bureau of Identification; and Dr. James O. Finckenaer, acting dean of the Rutgers School of Criminal Justice, who testified as an expert on the causes and prevention of crime. The defendants presented Henry F. Schlomann, director of the Paramus Police Identification Bureau; Police Chief Robert Riker of North Arlington; and Captain Fred Wandras of the Woodbridge Police Department. What follows are this court's findings of fact and conclu-

sions of law based on the record in this case and pursuant to Rule 52(a) of the Federal Rules of Civil Procedure.

Findings of Fact

1. Plaintiff New Jersey Citizens Action is a political action federation of concerned individuals and organizations engaged in efforts to improve the quality of life in New Jersey and incorporated under New Jersey law regulating not-for-profit corporations. Its organizational affiliates include trade unions, church groups, senior citizen associations, environmental groups and other citizens' organizations. It is governed by a Board of Directors elected at an annual convention. Through educational and organizing drives, petitioning for redress of griev-



ances, research, canvassing and citizen lobbying activities, New Jersey Citizens Action is working for legislative and political solutions to what it sees as New Jersey's most pressing problems, such as, energy costs, taxes, toxic wastes and unemployment caused by factory shutdowns. (Kirsch, T. 7/16 at 15-21).¹

2. Plaintiff League of Conservation Voters is an unincorporated association and a national political action committee which is registered with the Federal Election Commission and the New Jersey Election Law Enforce-

1. The transcripts of the 5 days of hearings are separately paginated. References are to the witness, the date of the hearing and page.



ment Commission. It maintains an office in New Brunswick, New Jersey. The organization works to inform citizens of the voting records of their representatives in Congress and the State Legislature and to aid in the election to public office of candidates who support legislation to protect the environment. New Jersey League of Conservation Voters also works to inform the public of environmental issues before Congress and the State Legislature and organizes support for environmental legislation. (Herzberg, T. 7/16 at 62-64).

3. Intervenor Paramus Citizens for a Nuclear Weapons Freeze is a voluntary unincorporated association which is working to stop the proliferation of nuclear weapons by urging public support for a nuclear weapons freeze. (Fish, T. 3/27 at 17-18).

4. The defendants herein are ten municipal corporations of the State of New Jersey, located in the counties of Bergen, Essex and Middlesex. They are empowered by state law, as public entities, to enforce certain police powers granted by statute and common law. Only the Boroughs of Harrington Park, North Arlington, Woodcliff Lake, Paramus and the Townships of Piscataway and Woodbridge, are actively defending in this matter.

5. Plaintiffs are all engaged in legislative and political activities which include conducting door-to-door canvasses to present their programs to citizens, receive citizens' viewpoints and solicit funds and other support for their legislative political activities. Individuals who contribute at least \$5 to NJCA become members (Kirsch, T. 7/16 at 16), and persons who contribute \$15 or more receive its regularly issued newsletter. (Kirsch, T. 7/16

at 17). NJCA has about 20,000 subscribing members. (Kirsch, T. 7/15 at 17). Individuals who contribute at least \$18 a year to LCV become members and receive its annual voting chart. (Herzberg, T. 7/16 at 74).

6. Defendants have all enacted ordinances which regulate door-to-door canvassing and solicitation. All six of the ordinances in the actively defending townships restrict the hours during which plaintiffs may canvass, although the curfew hour varies. Defendants North Arlington, Woodbridge and Woodcliff Lake prohibit canvassing after 5. p.m. Paramus forbids canvassing after 6 p.m. and all day Saturdays. Piscataway sets "sunset" as the curfew hour as does Harrington Park (the result of a recent amendment of its ordin-

ance). In addition, North Arlington forbids all canvassing during the month of December. The other major restriction to which plaintiffs object is a requirement enforced by four of the defendants -- North Arlington, Woodbridge, Paramus and Piscataway -- that all canvassers be fingerprinted.

7. It is the policy of the two named plaintiff organizations to conduct their canvass from 4 p.m. to 9 p.m. on weekdays, (Kirsch, T. 7/16 at 23; Herzberg, T. 7/16 at 67), and to canvass occasionally on Saturdays. (Little, T. 4/13 at 112; Herzberg, T. 7/16 at 78; Brown, T. 7/18 at 80). This is consistent

with the national policy of the Citizens Action network, which operates in a number of states and with which New Jersey Citizens Action is affiliated. (Kirsch, T. 7/16 at 23; Brown, T. 7/18 at 5). They cease canvassing at 9 p.m. in deference to homeowners' privacy at a time when some people start retiring for the night. (Little, T. 4/13 at 91; Brown, T. 7/18 at 5, 70). New Jersey Citizens Action, during its several years of operation in New Jersey, has canvassed until 9 p.m. in several hundred municipalities. (Kirsch, T. 7/16 at 27; Brown, T. 7/18 at 24).

8. Plaintiffs raise the overwhelming portion of their operating funds through the canvass. For NJCA, the percentage is above 80%. (Brown, T. 7/17 at 86; Kirsch, T. 7/16 at 22). For LCV, canvass income represents close to 100% of its gross revenues. (Herzberg, t. 7/16 at 69). Canvassing serves other important functions such as education and grass roots lobbying. (Kirsch, T. 7/16 at 17-18).

9. NJCA hires generally youthful canvassers who are guaranteed a salary a bit above the federal minimum wage for a 40-hour week so long as they meet a pre-set fund-raising goal. The canvassers can also earn bonuses if they raise substantially more than the minimum goal. (Kirsch, T. 7/16 at 42-43; Brady, T.

3/17 at 147, 170-174, 179-180; Herzberg, T. 7/16 at 70). The canvassers work a regular shift from 2 p.m. to 10 p.m. The hours from 2 p.m. to 4 p.m. are taken up with skills training, issue briefing and travel to the day's canvass locale. The canvassers canvass from 4 p.m. to 9 p.m., and the final hour is taken up with travel back to headquarters and with paper work. (Herzberg, T. 7/16 at 67; Brown, T. 7/18 at 3-4; Kirsch, T. 7/16 at 23-24). Because of the tedious nature of the work, canvassing for more than 5 hours a day is avoided. (Brown, T. 7/18 at 68). However, the economics of canvassing require that the canvassers be able to raise during the canvassing hours enough contributions to pay the salaries of the canvassers and supervisors and



the travel and overhead expenses of the organization. NJCA finds that its canvassers must raise an average of \$17 an hour during the 5 hours of canvassing in order to compensate canvassers and pay overhead costs of the canvassing operation. (Brown, T. 7/18 at 14). Once canvassers raise substantially more than that, they are entitled to retain a percentage of the excess. LCV operates in an almost identical fashion. (Herzberg, T. 7/16 at 60-72).

10. The highest paid employee of NJCA is co-director Richard Kirsch, who receives \$18,000 a year. (Kirsch, T. 7/16 at 13, 41). LCV director Herzberg is paid \$13,000 a year. (Herzberg, T. 7/16 at 72-73).

11. The percentage of individuals over the age of 14 at home increases, although not dramatically, in the evening hours. According to a 1973 report of the United States Bureau of Census ("Who's Home When", Exh. P2), the proportion of households with at least one person of 14 years or older at home is at its lowest between 2 p.m. and 2:50 p.m. (57%) increasing between 4 p.m. and 4:59 p.m. (70%); 5:00 p.m. and 5:59 p.m. (74%); 6:00 p.m. and 6:59 p.m. (75%); dipping slightly from 7 p.m. to 7:59 p.m. (71%) and again increasing between 8 p.m. and 8:59 p.m. (78%). According to records maintained by plaintiff NJCA

canvassing staff for 33 canvass days in six municipalities, about half the homes approached were occupied between 4 p.m. and 5 p.m. (51%) compared to 81% between 7 p.m. and 9 p.m. (P-11, Col. 3).

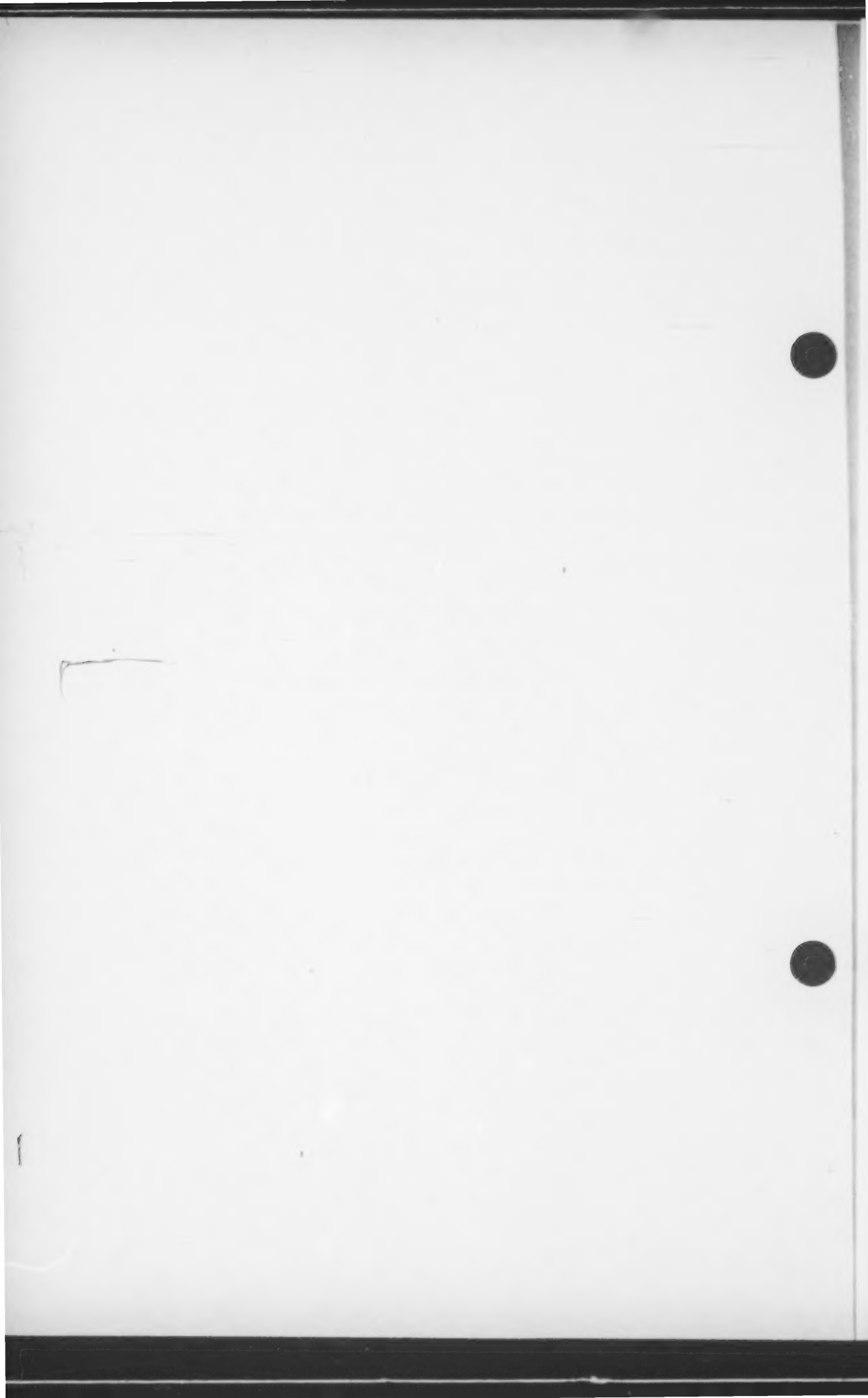
11. Plaintiffs' economic and political objectives are better fulfilled when canvassing during hours in which the at-home percentages are higher. For example, average contributions are smaller between 4 p.m. and 5 p.m. People who made a contribution between 4 p.m. and 5 p.m. contributed on the average of \$4.30, compared to an average contribution of \$8.43 between 8 p.m. and 9 p.m., and an

overall average contribution rate of \$6.92 (P-12, Col. 9). The lower contribution rate between 4 p.m. and 5 p.m. may reflect the fact that those at home at that hour are more likely to be unemployed or retired. (Brown, T. 7/18 at 39). Thus, 33 hours of canvassing in the six communities raised \$241 between 4 p.m. and 5 p.m. (P-12, Col. 8), or an average of a total of \$7.30 an hour; while 33 hours of canvassing between 7 p.m. and 8 p.m. raised a total of \$738 (P-12, Col. 8), or an average of \$22.36 an hour. Contributions declined slightly between 8 p.m. and 9 p.m. (to a total of \$641).

Further, NJCA records also demonstrate that in 33 hours of canvassing, canvassers gathered 119 signatures on petitions between 4 and 5 p.m.; the same number of canvassing hours produced 164 signatures between 5 p.m. and 6 p.m.; 164 signatures between 6 p.m. and 7 p.m.; 166 signatures between 7 p.m. and 8 p.m.; and 134 signatures between 8 p.m. and 9 p.m. (P-12, Col. 4). (See also Little, T. 4/13 at 112).

12. Neither these statistics nor the personal experience of canvassers who testified, indicate that canvassers were received with greater hostility during evening hours. (Brown, T. 7/18 at 20-21).

13. Canvassing is generally an occupation for young people early in their working careers, many of them full or part-time college students. (Kirsch, T. 7/16 at 37). There is a high turnover of canvassers. (Brown, T. 7/17 at 68-70 and T. 7/18 at 23; Herzberg, T. 7/16 at 92). It is thus likely that on any given day, NJCA will have new trainees in their canvassing crews. Trainees are taken out for an observation day before being formally hired, and during the observation day are assigned one hour of solo canvassing after accompanying an experienced canvasser for approximately four hours. (P-5). New



canvassers are given an instruction sheet with "Canvassing Tips" which advises them, inter alia, to be courteous and friendly, to seek to win friends for the organization and its viewpoints, to encourage contributors to write checks, and to keep a careful record of all contributions. (P-6). In short, the training process for both plaintiffs is similar: the prospective canvasser is subject to background screening and consideration of his or her interests in the work of the plaintiffs (Brown, T. 7-1 at 69), and the prospective canvasser actually observes canvassing in the field. New employees are trained on issues and on the skills of communication such as eye

contact and ability to articulate the issues (Brown, T. 7-18 at 71; Little, T. 4-13 at 85). No objective standards exist for the training of the prospective canvasser (Little, T. 7-18 at 86; Brady, T. 327 at 172).

14. There are no standards of educational achievement required for the hiring of new canvassers (Brown, T. 7-17 at 87). Prior to the commencement of this lawsuit, there was no questioning of a prospective canvasser as to prior criminal background or arrest records. (Brown, T. 7-17 at 87). Further, NJCA does not check the accuracy of any representations made by the prospective employee because it lacks the facilities for a follow-up investi-

gation (Brown, T. 7-18 at 70). NJCA does not confirm the accuracy of employee references. (Little, T. 4-3 at 116). The substantial factors utilized in the hiring process are the communication ability of the prospective canvasser (Hertzberg, T. 7-16 at 84) and the ability to articulate the issues and convince people to involve themselves in plaintiffs' work. (Brown, T. 7-18 at 33).

15. Because the economics of canvassing require that the organization minimize travel time, it maintains four canvass offices in different parts of the state. (Brown, T. 7/17 at 68). It is the general policy of the organization to notify local officials prior

to a canvass about the days they expect to be in the municipality and to provide a list of the canvassers who will be employed there.

(Brown, T. 7/17 at 105-106). The plaintiff organizations try to avoid canvassing a community more often than once a year so they don't have to go back to the same people too frequently. (Herzberg, T. 7/16 at 92).

16. The purpose of the hourly limitations on canvassing contained in the ordinance at issue are to prevent or deter crime and to protect the privacy of citizens at home.



17. The evidence introduced at trial in support of defendant's contention that the hourly limitations on canvassing in fact deter or prevent crime is weak. The most common type of crime involving private residences is burglary, that is, breaking, entering and larceny. (Schlomann, T. 7-16 at 125-26). Such crimes occur most often between 4 and 10 p.m. (Id. at 126). Officer Schlomann testified that the hourly limitations on solicitation together with the registration requirements for canvassers help to prevent or deter crime. (Id. at 126). For example, if an individual is seen approaching a home in a residential neighborhood during night hours a

neighbor would be more likely to call the police knowing that canvassers are not permitted at that time. (Id. at 126-27).

18. However, Mr. Schlomann's testimony in this regard was admittedly based on his own experience alone. T. 7-17 at 40. Defendant's witness, the Police Chief of North Arlington, Mr. Riker, testified to the contrary in many respects. Mr. Riker stated that he did not know how the hourly restrictions served to deter crime. T. 7-18 at 113. Plaintiffs' criminology expert testified that national statistics confirm that most suburban household burglaries do occur during the day when people are out of the house. (Finckenauer, T. 3/17 at 90). Dr. James O. Finckenauer testi-

fied that there was absolutely no correlation between the existence of canvassing ordinances in the defendant municipalities and the incidence of crime there. Dr. Finckenaue examined the crime rates in five of the defendant municipalities (those which enacted their curfews after the institution of the national crime reporting system) both before and after the adoption of the curfews and testified that any changes in the crime rates were consistent with general national trends, and could not be attributed to the changes in the law. (T. 3/27 at 73, 144). He also compared the crime rates in nine of the defendant municipalities with the crime rates

in demographically similar neighboring towns which lacked canvassing curfews and concluded again that there was no indication that the defendant municipalities' crime rates benefited from their curfews. (T. 3/27 at 73-76, 85-89, 128). Dr. Finckenauer was unable to comment on the crime rate in defendant Piscataway Township because its curfew was not adopted until 1983. Dr. Finckenauer noted that there has been a general national decline in crime during the past several years generally attributable to the decline in the percentage of young males, the group most likely to commit crime, in the general population. (T. 3/27 at 143).



Defendant's experts were unable to point to any evidence whatsoever that night-time canvassing by political action or social issue groups, which gave police advance notice of their activities and itineraries, contributed to crime in any way. There is no evidence that such a canvasser had ever committed any crime other than violation of a canvassing ordinance itself. (See, e.g., Schlomann, T. 7/17 at 47; Wandras, T. 7/18 at 160-161; Riker T. 7/18 at 129).

19. Further, defendant's witnesses testified that the public generally does not wish to be bothered at night. (Schlomann, T.

7/16 at 125; Riker, T. 7/18 at 105). These witnesses further testified that most individuals are afraid of strangers after dark.

(Schlomann, T. 7/17 at 64; Riker, T. 7/18 at 119). However, the personal experience of the canvassers who testified is to the contrary.

(Brown, T. 7/18 at 36-37).

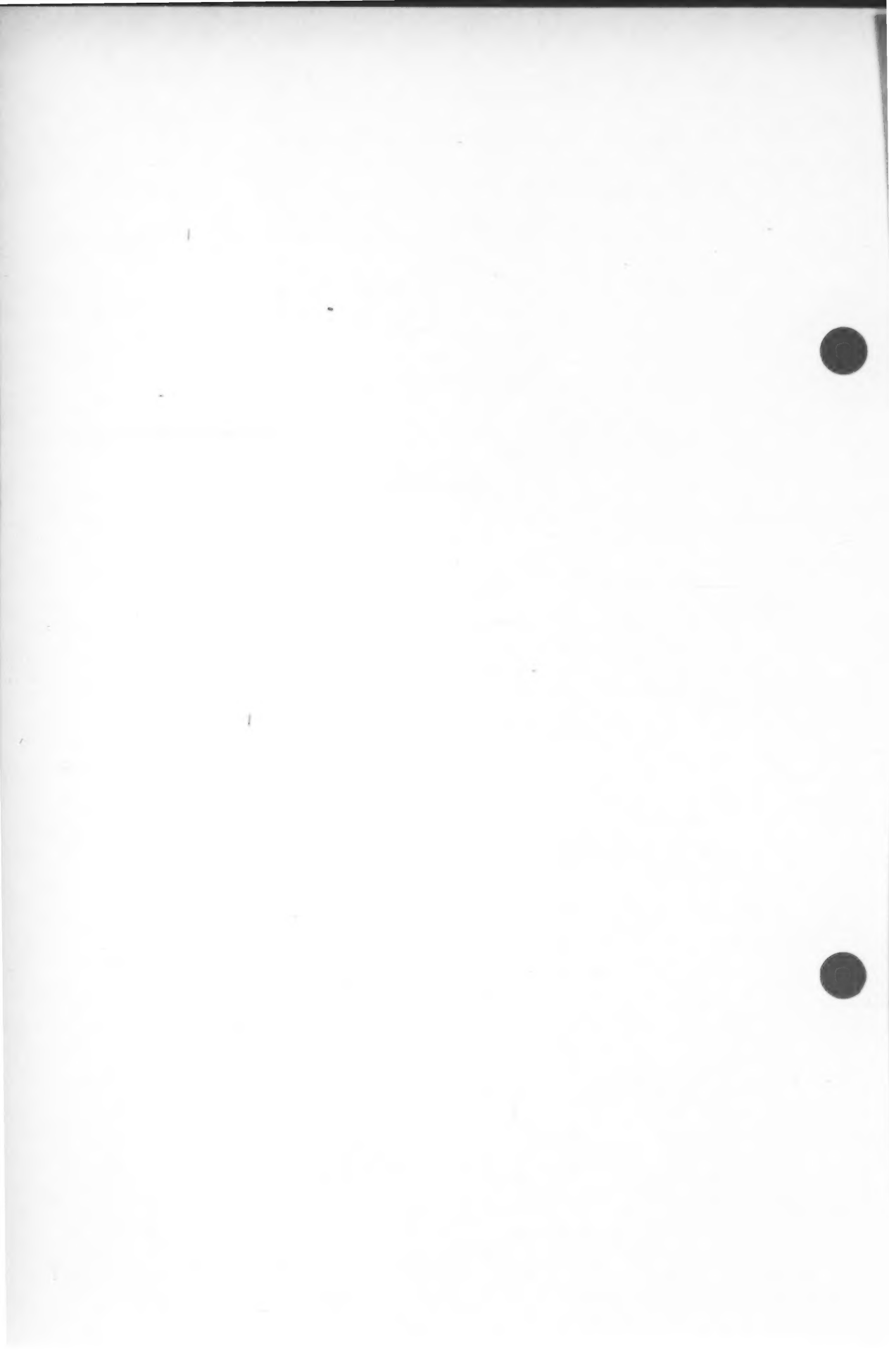
20. Canvassing is an effective way to make direct, personal contact with the public. Alternatives such as direct mail, phone canvass, or shopping mall canvass do not afford the same type of personal communication and are generally much more expensive.

(Brown, T. 7/18 at 88-89; Kirsch, T. 7/16 at 21-22). It would take five years to begin netting through direct mail solicitation even a fraction of the amount of that which is netted from door-to-door canvassing. (Brown,

T. 7/18 at 63). Another major drawback to using direct mail is that it involves a pre-identified list of people, whereas a door-to-door canvass allows for outreach to different groups. (Kirsch, T. 7/16 at 21).

LCV canvass director testified that canvassing shopping malls is also inadequate because "it doesn't cater to our needs in terms of contacting voters in their places of registration." (Herzberg. T. 7/16 at 98).

21. Plaintiffs have offered uncontradicted evidence that if not permitted to canvass in the evenings, they would no longer be able to exist (Kirsch, T. 7/16 at 25) because they cannot support their activity with the amount of contributions collected before 5 p.m. or through alternative methods of soliciting contributions.



22. Many of defendant's ordinances require individuals to be fingerprinted before canvassing. Many of the canvassers of NJCA and LCV associate fingerprinting with criminality and consider such a requirement stigmatizing, and an inappropriate burden on their right to do political work. (Brady, T. 3/27 at 151; Little, T. 4/13 at 83-84; Kirsch, T. 7/16 at 26, 28; Brown, T. 7/18 at 23; Herzberg, T. 7/16 at 77). In one instance, NJCA took a crew of seven canvassers to canvass in Belmawr Borough with realizing that Bellmawr required canvassers to be fingerprinted. When confronted by the police requirement, only two of the seven agreed to be fingerprinted and

were permitted to canvass in the municipality. The other five canvassers preferred to give up a day's work and pay rather than comply with the requirement. (Brady, T. 3/27 at 150-152). Even the older volunteer canvassers of the Paramus Nuclear Freeze Committee objected to the fingerprint requirement because of the air of criminality about it. (Fish, T. 3/27 at 21-25; Boldt, T. 3/27 at 32). Paramus' demand for fingerprints required the Freeze Committee to abandon its application for a canvassing permit until the court's injunction because its volunteers refused to submit to such a requirement. (Fish, T. 3/27 at 24).

23. Defendant's witnesses testified that fingerprinting is an "absolute" method of identification; that neither drivers' licenses nor social security numbers permit cross checking with extra-municipality law enforcement agencies to insure proper identification; that fingerprinting is the only method from which the "rap sheet" of a suspect can be derived (Riker, T. 7/18 at 94 through 97); that fingerprinting is the best form of identification (Wandras, T. 7/18 at 141); that photographs are an inadequate way to insure proper identification (Schlomann, T. 7/16 at 110).

24. At the present time there is nothing local police can do with such fingerprints until there is evidence of criminal activity other than check them against their own fingerprint files, if any. The FBI and the State Police abandoned the practice of processing fingerprint checks for licensing applications in 1982. (Lt. Thomas Heustis, 4/13 at 5-13 and Exh. P-2). The primary reason for abandonment of the process was apparently financial. Checking an out-of-towner's fingerprints against a municipal fingerprint file is of limited value. Unless the applicant had prior contact with that

police department, his or her prints would not be on file. (Schlomann, T. 7/17 at 36-37, 55-56). Defendants' police experts concede that there was no noticeable impact on crime when the state police and the FBI abandoned applicant fingerprint processing in 1982. (Riker, T. 7/18 at 127; Wandras, T. 7/18 at 147-148). Even when the State Police and FBI were doing such fingerprint identification checks, the Paramus Police Department authorized temporary canvassing permits to applicants during the 3 to 5 week period it took to receive a fingerprint report. (Schlomann, T. 7/16 at 109; T. 7/17 at 9-10).

25. The very existence of a fingerprinting requirement and the opportunity to accurately screen prospective canvassers acts as a crime deterrent (Wandras, T. 7/18 at 144; Schlomann, T. 7/16 at 127). In part, the deterrent effect attributable to a fingerprinting requirement is based upon the fact that fingerprinting is the only positive and sure method of providing identification of the individual and providing a determination that the individual may have a criminal record (Schlomann, T. 7/17 at 34; Riker, T. 7/18 at 116). The unquestioned utility of fingerprinting is that it is the best source of individual identification (Finckenauer, T. 3/27 at 95).

26. The ordinances do require other information for registration or licensure such as name, address, phone and a driver's license or other identification document.

Should there ever be a complaint about the behavior of one of the plaintiffs' canvassers at a home, that canvasser can be readily identified without fingerprinting on the basis of these records in most cases. (Brown, T. 7/18 at 3-4).

27. The ordinances in question impose other requirements on individuals wishing to do door-to-door solicitation:

(a) Paramus Borough requires an applicant to provide a statement by a Bergen County physician dated not more than 10 days prior to submission of the application certifying the defendant to be free of contagious, infectious or communicable disease.

(b) Piscataway, Paramus and Woodbridge require that applicants submit onerous character references. Piscataway demands "appropriate evidence of good character and business responsibility;" Paramus requires that applicants supply the names of two property owners

in bergen County who will certify the applicant's good character and business responsibility; and Woodbridge requires the names of three business references or three property owners in Middlesex County.

(c) Both Paramus and Woodbridge require that the applicant submit a photograph taken within the past 60 days. Canvassers for the plaintiff organizations NJCA and LCV each carry their own photo ID badge. (Brady, T. 3/27 at 155; Herzberg, T. 7/16 at 71).

(d) North Arlington requires that applicants list their race on their application.



7



(e) Paramus requires a \$30 fee per applicant. Piscataway charges a fee of \$10 plus \$1.50 for a badge. Woodbridge requires a \$5 fee. North Arlington, Harrington Park and Woodcliff Lake have no fee requirements.

(f) The ordinances of Piscataway, Paramus, Woodbridge and North Arlington each lodge some discretion in the respective chiefs of police to investigate applicants and deny canvassing permits on the basis of unspecified criteria.

(g) The Paramus ordinance on its face also requires a \$1,000 bond of each canvasser, but counsel for defendant has stipulated that that provision is no longer enforced by the Borough.

28. Plaintiffs have not pursued their claims that these provisions are unconstitutional at this time but have requested that this court retain jurisdiction to consider these claims in the event that they prevail on their claims regarding time restrictions and fingerprinting. Therefore, I will not consider these matters further.

CONCLUSIONS OF LAW

1. Door-to-door canvassing for ideological causes has long been held to be protected by the First Amendment of the United States Constitution. Schneider v. New Jersey, 308 U.S. 174 (1939); Martin v. Struthers, 319 U.S. 141 (1943); Village of Schaumburg v. Citizens for a Better Environment, 444 U.S. 620 (1980). Indeed, the Supreme Court has recognized the especial importance of canvassing as a means of expression "to the poorly financed causes of little people." Martin v. Struthers, 319 U.S. at 145-46. "[T]he Court has shown special solicitude for forms of expression that are much less expensive than feasible alternatives and hence may be important to a

large segment of the citizenry." Members of the City Council of Los Angeles v. Taxpayers for Vincent, _____ U.S. _____, 104 S. Ct. 2118, 2188 n.30 (1984) citing Martin, 319 U.S. at 145-46.

2. The constitutional protection for the right to canvass is not diminished by the fact that the canvassers also solicit financial support in addition to spreading their ideological message. In Village of Schaumburg, the Supreme Court stated:

...the reality is that solicitation is characteristically intertwined with informative and perhaps persuasive speech seeking support for particular causes or for particular views on economic, political, or social issues, and the reality that without solicitation the flow of such information and advocacy will likely cease. Canvassers in such contexts are necessarily more than solicitors for money.

444 U.S. at 632; cf. Bates v. State Bar of Arizona, 433 U.S. 350, 363 (1973) "[O]ur cases long have protected speech even though it is in the form...of a solicitation to pay or contribute money.")

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444 U.S. at 632; cf. Bates v. State Bar of Arizona, 433 U.S. 350, 363 (1973) "[O]ur cases long have protected speech even though it is in the form...of a solicitation to pay or contribute money.")

3. While the courts have recognized that door-to-door canvassing is a protected form of speech, it is equally well established that freedom of speech is not absolute. Heffron v. International Society for Krishna Consciousness, 452 U.S. 640 (1981); Grayned v. City of Rockford, 408 U.S. 104 (1972). It is thus undisputed that door-to-door canvassing for political or charitable purposes is subject to reasonable time, place and manner restrictions. See Hynes v. Mayor of Oradell, 425 U.S. 610, 616-17 (1976); Pennsylvania Alliance for Jobs & Energy v. Council of the Borough of Munhall, 743 F. 2d 182, 185 (3d Cir. 1984).

4. Such restrictions are deemed reasonable where they are imposed "without reference to the content of the regulated speech ... serve a significant governmental interest, and ... leave open ample alternative channels for communication" Heffron, 452 U.S. at 648; Virginia Pharmacy Board v. Virginia Citizens Consumers Council, 425 U.S. 748, 771 (1976). Such reasonable restrictions on speech are not subject to the more rigorous "least restrictive alternative" test applicable where the restrictions imposed are content-based.

Munhall, 743 F.2d at 185; see Taxpayers for Vincent, 104 S.Ct. at 2133. There is no contention in the instant case that the ordinances in question regulate expression based on its content.

5. Turning to the constitutionality of the restrictions on permissible hours for door-to-door canvassing in the defendant municipalities under the First Amendment, this court must first determine whether they are "precisely drawn to serve the interests they are designed to further." Munhall, 743 F.2d at 187 citing Secretary of State of Maryland v. Joseph H. Munson Co., ___ U.S. ___, 104 S.Ct. 2839, 2853 (1984).

6. Defendants assert that their interest in deterring or preventing crime as well as in protecting the privacy of their citizens are precisely served by the restrictions at issue. There is no question that these are legitimate and substantial state interests in service of which a state or municipality may properly regulate. See Hynes, 425 U.S. at 616-17, 619; Munhall, 743 F.2d at 187.

7. In determining whether the restrictions at issue precisely serve these state interests, I note that "[t]he Supreme Court has not required that this fact be established by empirical data as implied by plaintiffs. ... Instead, the legislative judgment that such goals are advanced by an ordinance is deferred to unless it is facially unreason-

able." Fromer v. Cheltenham Township, 709 F.2d 874, 877 (3d Cir. 1983) citing Metro-media, Inc. v. San Diego, 453 U.S. 490, 507-08 (1981).

8. The Third Circuit has specifically held that restrictions on door-to-door canvassing which prohibit such activity after dark or after 5:00 p.m. are per se facially unreasonable as a matter of law where the purposes advanced in support of such restrictions are crime prevention and the preservation of privacy. See Munhall, 743 F.2d at 187. Because the Third Circuit's rationale is binding on this court, it is quoted in full below:

These ordinances' prohibition of door-to-door canvassing after daylight hours is intimately linked to the towns' interests in preventing crime. The district court found that each of the towns established a significant incidence of burglary and home invasion. That unregulated canvassing poses a risk of crime is well known: "burglars frequently pose as canvassers, either in order that they may have a pretense to discover whether a house is empty and hence ripe for burglary, or for the purpose of spying out the premises in order that they may return later." Martin v. City of Struthers, 319 U.S. 141, 146, 63 S.Ct. 862, 864, 87 L. Ed. 1313 (1943), Indeed, the record in this case indicates that at least one of the towns has had experience with canvassers being involved in burglary and other crime. See App. at 358a-60a. The local authorities' task of detecting and preventing burglary would clearly be more difficult if strangers to their communities were permitted to roam from house to house after dark. The bans of door-to-door canvassing after dark directly and precisely serve the towns' interest in preventing crime.

The prohibitions of canvassing after 5:00 p.m. also directly further the towns' interest in protecting the privacy of their residents. "Preserving the sanctity of the home, the one retreat to which men and women can repair to escape from the tribulations of their daily pursuit, is surely an important value." Carey v. Brown, 447 U.S. 455, 471, 100 S.Ct. 2286, 2295, 65 L.Ed. 2d 263 (1980). This value is clearly promoted by regulations that protect persons from the annoyance of coping with uninvited solicitors at the dinner hour and in the evening.

We hold, therefore, that the time-of-day restrictions in these ordinances are precisely tailored to serve the towns' substantial inter-

ests in preventing crime and protecting the privacy of their residents.

Id.

9. In light of the Munhall case and because under Fromer a facially reasonable relation between the restrictions and the asserted state interests is all that is required, I am constrained to find that the hourly restrictions at issue in this case are precisely drawn to serve the interests they are designed to further. See State of Maryland v. Munson Co., 104 S.Ct. at 2853. I must

so hold though I find the preponderance of the evidence on the record before me weighs rather heavily in the direction of the plaintiffs herein. In short I find that while the preponderance of the evidence indicates that the time restrictions on canvassing do not deter or prevent crime in these municipalities as a matter of fact, such restrictions are constitutional in this circuit after Munhall insofar as they are content neutral and they leave ample alternative means of expression open. See generally, Munhall, 743 F.2d 189, 190-91 (Becker, J. dissenting). While the factual record in the instant case is somewhat more balanced regarding the state's interest in protecting privacy in the home, this interest too is narrowly served by the re-

strictions at issue as a matter of law. See
Munhall, 743 F.2d at 187.

10. I turn now to the question of whether the ordinances in question leave ample alternative channels of communication open to the plaintiffs. In Munhall, the Third Circuit dealt with this requirement stating as follows:

The ordinances upheld by the district court specifically permit door-to-door canvassing during the day on Saturday. Moreover, none of the ordinances prevent PAJE from conducting personal solicitation in other forums, such parks and shopping districts, or from proselytizing by telephone or mail. We therefore find PAJE's contention that it is left without adequate alternative channels of communication to be without merit.

743 F.2d at 188.

11. The preponderance of the evidence on the record before me indicates that these plaintiffs do not have meaningful alternatives to evening canvassing. The uncontradicted testimony is to the effect that plaintiffs could not survive economically if the restrictions at issue remain in place. The economic viability of these grass roots organizations is sufficiently tenuous that the use of more expensive means of reaching the public such as direct mail would be prohibitive to their continued operations. Plaintiffs could not survive economically if canvassing was limited to hours of low home occupancy. Further, in some respects there are no alternatives to

door-to-door canvassing. See Munhall, 743 F.2d at 193-94 (Becker J., dissenting).

Despite my factual findings in this regard, I am again constrained to conclude that where canvassing is permitted during the day and on Saturdays², the use of parks, shopping centers, telephones and mail are per se adequate alternatives to evening canvassing in this Circuit. See Munhall, 743 F.2d at 188.

2. This court is informed that Paramus has voluntarily amended its ordinance to permit canvassing on Saturdays.

12. I therefore conclude that the Munhall case is dispositive and that the hourly restrictions in the ordinances at issue are constitutional and do not offend plaintiffs' rights under the First and Fourteenth Amendments.

13. I turn now to the constitutionality of the fingerprinting requirements for canvassers. Based on the record before me I find that the fingerprinting requirements are reasonably related to the defendant's interest in deterring, preventing or prosecuting crime. The Third Circuit has stated that:

Unless the burdens [fingerprinting] placed on the individual are unreasonable, ... it will be upheld as one of those annoyances which must be suffered for the common good ... 'Any restraint on the person may be burdensome. But some burdens must be borne for the good of the community The slight interference with the person involved in fingerprinting seems ... one which must be borne in the common interest.'

United States v. Krapf, 285 F.2d 647 (3d Cir. 1960) quoting United States v. Kelly, 55 F.2d 67, 68 (2d Cir. 1932). While not specifically passing on this question, the Supreme Court has implied that some form of licensing of canvassers is permissible where solicitation of funds

is involved, Hynes v. Mayor of Oradell, 425 U.S. 610 (1976), and recently, the Third Circuit in Munhall, has implicitly approved the constitutionality of a licensure provision which requires fingerprinting. 743 F.2d at 189 n.7.

14. The record in this case indicates that fingerprinting is a more reliable method of identification than any other, including the use of a photo identification. Further defendant's witnesses testified that the fingerprinting and other licensure and registration requirements deter those with criminal records and criminal design from obtaining a permit to canvass. Such a permit would give prospective burglars the legal imprimatur to go door-to-door checking

private premises in service of planned criminal activity. Further, while the municipalities can no longer obtain records on canvassers from state police or the FBI, they can compare them to their own files in this respect. Although there is no evidence on this record that canvassers have been involved in criminal activity, I find the fingerprinting requirement reasonably related to defendant's interest in deterring crime against its citizens.

15. Plaintiffs also claim that various other registration requirements of the ordinances are constitutionally infirm and further that the ordinances vest too much unbounded discre-

tion in local officials. They have not actively litigated these claims and have created no factual record in this regard. They request, however, that this court retain jurisdiction over these claims in the event that the defendant municipalities attempt to enforce them in an unconstitutional manner. Plaintiffs' claims that registration requirements other than fingerprinting are not reasonably related to legitimate state interests are without merit and I therefore decline to retain jurisdiction over these claims. Similarly, I decline to retain jurisdiction over plaintiffs' claims that the ordinances in question vest too much discretion in local officials on their face for the same reason. See Munhall, 743 F.2d at 188-89. I further decline to retain jurisdiction over plaintiffs' claims that the ordinances are unconstitutional under the First and Fourteenth

Amendments as applied. There is simply no evidence on the current record that the ordinances were applied to plaintiff's in an unconstitutional manner nor that they will be so applied in the future.

16. I turn finally to plaintiffs' claim that the ordinances in question violate the provisions of the New Jersey Constitution which are analagous to the First Amendment to the United States Constitution. It is not seriously disputed that this issue is unsettled under state law and that it turns on "the delicate question of interpretation of the [New Jersey] constitution ... [generally] left to the [Supreme Court of New Jersey] which is charged with the duty in proper cases of issuing finally

determinative ruling[s]," on such matters. See Johnson v. University of Pittsburgh, 435 F. Supp. 1328 (W.D. P. 1977).

17. There is, of course, no question that this court has the judicial power to consider such pendent state law claims where the federal claims are substantial and "[t]he state and federal claims ... derive from a common nucleus of operative fact" as in this case. See United Mine Workers of America v. Gibbs, 383 U.S. 715, 725 (1966). It is further undisputed that such "power need not be exercised in every case in which it is found to exist. It has consistently

been recognized that pendent jurisdiction is a doctrine of discretion, not of plaintiff's right." Id at 726 (footnote omitted).

18. It is true that this case has already been tried and that considerations of judicial economy weigh in favor of the exercise of pendent jurisdiction over plaintiffs' state constitutional claims in this case. See Id. However, "[n]eedless decisions of state law should be avoided both as a matter of comity and to promote justice between the parties, by procuring for them a surer-footed reading of applicable law." Id. Thus it is clear that in the "exercise of that statesmanship which is

required of any arbiter of the relations of states to nation in a federal system," this court should not readily determine "issues that might be more appropriately left to settlement in state court litigation." Id. at 726 n.15 (citations and quotations omitted); see also Railroad Commission v. Pullman co., 312 U.S. 496 (1941) (abstention from exercise of jurisdiction over state and federal claims where resolution of unsettled questions of state law by state court might obviate necessity for adjudication of federal constitutional claim).



19. The questions of state law at issue here are unsettled and of great magnitude. Resolution of these issues by this court "cannot escape being a forecast rather than a [final] determination," id., and is therefore more appropriately left to the courts of New Jersey. I therefore decline, in my discretion, to exercise pendent jurisdiction over these state constitutional claims and I will not consider them further.

20. In sum, judgment shall be entered in defendants' favor on plaintiffs' claims that the hourly restriction and registration requirements violate the United States Constitution on their face. Plaintiffs' claims that any or all of the challenged provisions of the ordinances are violative of their rights under the New Jersey Constitution are dismissed in this court's discretion under Gibbs. An order accompanies this opinion.

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY
CIVIL ACTION No. 84-745

NEW JERSEY CITIZENS ACTION -:
and THE NEW JERSEY LEAGUE OF
CONSERVATION VOTERS, :

Plaintiff, : ORDER

-vs- :

EDISON TOWNSHIP, GLEN :
RIDGE TOWNSHIP, et al. :
_____:

This case having been tried to this court without a jury in a hearing on the merits consolidated with a hearing on plaintiffs' application for preliminary injunctive relief pursuant to Fed.R.Civ.P. 65 and the parties having submitted proposed findings of fact and conclusions of law and this court having carefully considered the record herein;

It is on this 10th day of April, 1985;

ORDERED that judgment shall be entered in defendants' favor on plaintiffs' claims that the hourly restriction and registration requirements violate the United States Constitution on their face; and

IT IS FURTHER ORDERED that plaintiffs' claims that any or all of the challenged provisions of the ordinances are violative of their rights under the New Jersey Constitution are dismissed in this court's discretion under Gibbs.

s/HAROLD A. ACKERMAN
HAROLD A. ACKERMAN
U.S.D.J.

TOWNSHIP OF PISCATAWAY

ORDINANCE OF THE TOWNSHIP OF PISCATAWAY

CHAPTER VII

LICENSING--GENERAL*

7-1 General Provisions.

7-1.1 Purposes. The purposes of this chapter are:

a. To provide uniform procedures for the administration of the issuance, renewal, and revocation of all licenses issued by the Township of Piscataway, except alcoholic beverage licenses, dog licenses, and taxicab licenses;

b. To prevent dishonest business practices by requiring persons intending to engage in the businesses referred to in this chapter to provide preliminary information, to be licensed, and to conform to the provisions hereof;

c. To prevent unfair competition among those persons engaging in the businesses regulated by this chapter.

* The general power to license and to prescribe license fees is contained in R.S. 40:52-1, 2. Licensing is also a part of the general police power granted by R.S. 40:69A-29,30.

7-1.2 Applications and Application Fee. All applications for licenses shall be accompanied by the appropriate fee and shall be made to the township clerk upon forms provided by him, and shall contain the following information:

a. Name and permanent and local address of the applicant. If the applicant is a corporation, the name and address of its registered agent.

b. If the licensed activity is to be carried on at a fixed location, the address and description of the premises.

c. If a vehicle is to be used, its description including the license number.

d. If the applicant is employed by another, the name and address of the employer, together with credentials establishing the exact relationship.

e. The days of the week and the hours of the day during which the licensed activity will be conducted.

f. A description of the nature of the business and the goods, property or services to be sold or supplied.

g. A statement as to whether the applicant has been convicted of any crime or the violation of any municipal ordinance other than traffic offenses and, if so, the date and place of conviction, the nature of the offense, and the punishment or penalty imposed.

h. Appropriate evidence as to the good character and business responsibility of the applicant so that an investigator may properly evaluate his character and responsibility.

i. Applications by partnerships shall be signed by all partners with the information required by this subsection supplied in detail as to each partner, and applications of corporations shall have attached individual statements containing all of the information required by this subsection relating to each employee or agent who shall engage in the licensed activity, and shall be signed by each employee or agent.

7-1.3 Investigation of Applicants. Each application shall be referred to the chief of police or a police officer designated by him, who shall immediately institute whatever investigation of the applicant's business responsibility, moral character, and ability to properly conduct the licensed activity as the chief of police considers necessary for the protection of the public. He shall communicate his findings to the township clerk within a reasonable time after the application has been filed. If the investigator decides that the applicant's character, ability, or business responsibility is unsatisfactory, or that the products, services or activity are not free from fraud, he shall disapprove the application, in which event the clerk shall not issue the requested license and shall so notify the applicant. Otherwise, unless a provision of this chapter specifically requires council approval, the township clerk shall issue the license forthwith, provided that the required license fees have been paid. In

the case of a bicycle license, the license may be issued immediately, subject to the conduct of the investigation. In the event that a requested license is not issued because of a disapproval by the investigating officer, the applicant may appeal to the township council for a hearing. The appeal must be filed, in writing, with the township clerk within 14 days after notification of the refusal. The township council shall hold its hearing within 30 days thereafter, unless the applicant agrees to extend the time for such hearing. The council's decision shall be final. [Amended 1-19-82 by Ord. No. 82-1].

7-1.4 Contents of License. Licenses shall be in a form which the township council shall prescribe by resolution, and shall contain the following information:

- a. The name and address of the licensee.
- b. The number and type of the license and the nature of the licensed activity.

c. The address at which the licensed activity is conducted, if the activity is carried on at a fixed location.

d. If the licensed activity is conducted from a vehicle, the make, model and license number of the vehicle.

e. The expiration date of the license.

f. Any other appropriate information which the township council may, by resolution, require.

7-1.5 License Record. The clerk shall keep a record of all licenses issued under this chapter. The record shall be in a form prescribed by resolution of the township council and shall contain the same information as is required by subsection 7-1.4 to be contained in the license. It shall also indicate the amount of the fee paid for the licenses, the date upon which payment was received, the date of the issuance of the license, whether the license is a new



license or a renewal, and any other information which the township council may, by resolution, require.

7-1.6 Display of License. When the licensed activity is conducted at a fixed location, or from a vehicle, the license shall be prominently displayed at the location or on the vehicle. In all other cases, the licensee shall have the license in his possession at all times and shall display it upon the request of any police officer or any person with whom he is doing business.

7-1.7 Transferability. Every license shall apply only to the person to whom it was issued and shall not be transferable to another person. Licenses may be transferred from place to place, in cases where the licensed activity is conducted at a fixed location, but only with the approval, by resolution, of the township council. The fee for the transfer of a license from place to place shall be five (\$5.00) dollars.

7-1.8 Expiration Date, Renewal, Proration of Fees. Except where expressly provided otherwise, all licenses shall expire on December 31 of the year of issue at 12 midnight local time. Applications for the renewal of licenses shall be made not later than December 1.

7-1.9 Revocation of License, Causes. Any license or permit issued by the township may be revoked by the township council after notice and a hearing for any of the following causes:

a. Fraud or misrepresentation in any application for a permit or license.

b. Fraud, misrepresentation or other dishonesty in the conduct of the licensed activity.

c. A violation of any provision of this revision.

d. Conviction of the licensee for any felony or high misdemeanor or a misdemeanor or disorderly person's offense involving moral turpitude.

e. Conduct of the licensed activity whether by the licensee himself or his agents or employees in an unlawful manner or in a manner that constitutes a breach of the peace or a menace to the public health, safety or general welfare.

f. Whenever a license has been issued immediately upon an application, pending the results of the investigation provided for by this chapter, such license may be summarily revoked if the result of the investigation is such as would have resulted in denial of the application.

7-1.10 Notice of hearing. Notice of a hearing for the revocation of a license or permit shall be given in writing by the clerk. The notice shall specifically set forth the grounds upon which the proposed revocation is based and the time and place of the hearing. It shall be served by mailing a copy to the licensee at his last known address by certified mail, return receipt requested, at least five days prior to the date set for the hearing.

7-1.11 Hearing, Determination. At the hearing the licensee shall have the right to appear and be heard, to be represented by an attorney, to present witnesses in his own behalf, to cross-examine opposing witnesses and to have a permanent record made of the proceedings at his own expense. The township council shall revoke or suspend the license if they are satisfied by a preponderance of the evidence that the licensee is guilty of the acts charged.

7-1.12 Reinstatement of Revoked Licenses. The township council may issue another license to a person whose license has been revoked or denied as provided in this section if after hearing they are satisfied by clear and convincing evidence that the acts which led to the revocation or denial will not occur again; otherwise, no person whose license has been revoked or denied, nor any person acting for him, directly or indirectly, shall be issued another license to carry on the same activity.

7-1.13 Power to Make Rules and Regulations. The township council may, by resolution, make rules and regulations which interpret or amplify any provision of this chapter or for the purpose of administering the provisions of this chapter or making them more effective. No regulation shall be inconsistent with or alter or amend any provision of this chapter and no regulation shall impose any requirement which is in addition to or greater than the requirements that are expressly or by implication imposed by any provision of this chapter.

7-2 **Hawkers and Peddlers.**

7-2.1 License Required. No person shall sell, offer for sale, hawk or peddle in the Township of Piscataway any goods, wares or merchandise, with or without a basket, pack or bundle, without first obtaining a license.

7-2.2 Badge and Plate Required. Every person licensed shall wear conspicuously, while engaged in his occupation, a metal badge on which shall be the following words, "Licensed, Township of

Piscataway, New Jersey." The Township Clerk shall provide the badge and shall charge and receive fifty cents (\$0.50) for the same. Every wagon, automobile, cart or other vehicle used shall have upon the outside thereof, in a conspicuous place, a metal plate with the following words plainly painted thereon, "Licensed, Township of Piscataway, New Jersey." The plate shall be provided by the Township Clerk, and he shall charge and receive fifty cents (\$0.50) for the same.

In addition to displaying the metal badge and plate as required herein, a copy of the photograph of the licensee shall be attached to the license, which photograph shall be furnished by the Police Department. The licensee shall exhibit his license to any police officer or other person upon request.

7-2.3 Prohibited Conduct. No vendor of goods, wares, or merchandise who has obtained, or is required to obtain, a license pursuant to this chapter shall remain at any location for the

purpose of selling or offering goods, wares, or merchandise for sale, for a period longer than ten minutes in duration. Following the expiration of ten minutes, the vendor will be required to move a distance not less than 500 feet, prior to the resumption of the sale, or offer of sale, of goods, wares, or merchandise. This section shall not apply to the sale of goods, wares, or merchandise from a residential location.

[Amended 1-19-82 by Ord. No. 82-1]

7-2.4 Hours. No person licensed shall sell or offer for sale wares, goods and merchandise except between the hours of 8:00 a.m. and sunset. Ringing doorbells of private residents after sunset is prohibited. [Amended 7-15-75 by Ord. No. 75-21]

7-2.5 Age Restriction. No license shall be issued pursuant to subsection 7-2.1 of this section to any person under the age of 18 years. [Added 1-19-82 by Ord. No. 82-1]

7-2.6 Council Consideration and Approval Required. No license shall be issued pursuant to subsection 7-2.1 of this section except upon consideration and approval of the township council. [Added 1-19-82 by Ord. No. 82-1]

7-3 Solicitors, Canvassers and Itinerant Vendors.

7-3.1 License Required. It shall be unlawful for any solicitor, canvasser or itinerant vendor to engage in such business within the corporate limits of the township without first obtaining a license therefor in compliance with the provisions of this section.

Where the applicant had obtained a license in the prior year and has satisfied all requirements of this chapter with the exception as to clearance of fingerprints, the Chief of Police may recommend conditional approval subject to the receipt of clearance of the applicant's fingerprints. In such case, the Township Clerk will issue a temporary license for a period not to exceed one hundred twenty (120) days.

7-3.2 Definition. A "canvasser," "solicitor" or "itinerant vendor" is defined as any individual, traveling either by foot, wagon, automobile, motortruck or any other type of conveyance to any house, place or street or from house to house without prior consent and invitation of the owner or occupant of any such house or from place to place, or from street to street, within the township for the purpose of canvassing, soliciting or selling goods, wares, merchandise or personal property, tangible or intangible, of any nature whatsoever, or canvassing, soliciting or selling or attempting to canvass, solicit or sell services to be furnished or performed, presently or in the future, whether or not such individual has, carries or exposes for sale a sample of the subject of such sale or whether he is collecting advance payments on such sales or not, provided that such definition shall not be construed to include any person that hires, leases, uses or occupies any building, structure, hotel room, apartment, shop or any other

place within the township for the sole purpose of exhibiting samples and taking orders for the sale and delivery of such merchandise; nor shall such definition be construed to apply to brokers or agents of insurance companies, or to any person selling or distributing food or drink for human consumption or to any person, who by previous invitation of the owner or occupant of premises within the township, is directed to visit the premises of such owner or occupant for the purpose of canvassing, soliciting or selling goods, wares, merchandise, personal property and services, or to any person who is licensed by the township to canvass, solicit or sell goods, merchandise, personal property or services of any nature whatsoever, nor to employees of any public utility which is subject to regulation by the Board of Public Utility Commissioners of the State of New Jersey when carrying an identification card, badge or insignia issued by such a public utility.

7-3.3 Additional Application Information. In addition to the information required by Subsection 7-1.2 the following information shall be provided:

a. A brief description of the nature of the business and the goods to be sold.

b. If employed, the name and address of the employer, together with credentials establishing the exact relationship.

c. The length of time for which the right to do business is desired.

d. The place where the goods or property proposed to be sold, or orders taken for sale thereof, are manufactured or produced, where such goods or products are located at the time the application is filed, and the proposed method of delivery.

7-3.4 Fees. The license fee which shall be charged by the township clerk for the license shall be ten (\$10.00) dollars per year for the first year, and five (\$5.00) dollars per year for each year of renewal. The license shall

expire on December 31 of the year in which it is issued. However, in the case of any honorably discharged veteran, this fee shall be waived upon his compliance with the state statutes.

7-3.5 Badges. The township clerk shall issue to each licensee at the time of delivery of his license a badge which shall contain the words "Licensed Solicitor", the year for which the license is issued and the number of that license, in letters and figures easily discernible from a distance of ten feet. The badge shall, during the time the licensee is engaged in soliciting, canvassing, or itinerant vending, be worn constantly by the licensee on the front of his outer garment in such a way as to be conspicuous.

The township clerk shall charge a fee of one dollar and fifty (\$1.50) cents for the issuance of the required badge. This fee shall be in addition to the fee for the license and shall be payable every time a new identification badge is requested. [Amended 3-6-79 by Ord. No. 79-7]

7-3.6 Exhibition of License. Solicitors, canvassers and itinerant vendors are required to exhibit their licenses at the request of any citizen.

7-3.7 Duty of Police To Enforce. It shall be the duty of any police officer of the township to require any person seen soliciting, canvassing or itinerant vending and who is not known by such officer to be duly licensed, to produce his solicitor's license and to enforce the provisions of this section.

7-3.8 Records. The chief of police shall report to the township clerk all convictions for violation of this section and the township clerk shall maintain a record for each license issued and record the reports of violation therein.

7-3.9 Age Restriction. No license shall be issued pursuant to subsection 7-3.1 of this section to any person under the age of 18 years.

[Added 1-19-82 by Ord. No. 82-1]

7-3.10 Council Consideration and Approval Required. No license shall be issued pursuant to subsection 7-3.10 of this section except upon consideration and approval of the township council. [Added 1-19-82 by Ord. No. 82-1]

7-4 **Pool, Billiards, Bowling, Dance Halls**

7-4.1 License Required. No person shall keep or operate billiard tables, pool tables, bowling alleys, dance halls or dance pavillions for public use or hire within the township without first obtaining a license.

7-4.2 Additional Application Information. In addition to the information required in subsection 7-1.2, the following information shall be provided:

a. The verified consent of the owner of the premises if the applicant is not the owner.

b. The number of tables or alleys or dance halls to be operated.

7-4.3 Hearing Required. The license shall be granted by the township council within 60 days of the receipt of the application after hearing all interested parties at a public hearing. The township shall publish a notice of hearing in a local newspaper at least ten days prior to the scheduled date. The license shall be granted if the township council decides that its issuance will not be detrimental to the public health, safety and welfare of the township.

7-4.4 License Fees. The annual license fees shall be fifty (\$50.00) dollars for each billiard table or pool table and fifty (\$50.00) dollars for each dance hall or dance pavilion provided that no license fee shall be charged . any religious, fraternal or charitable organization or institution, school, fire association or rescue squad of the township.

The annual license fee for each establishment to which the public is invited to participate in bowling shall be one hundred (\$100.00) dollars.

Said fee shall not vary with the number of individual lanes available to the public for bowling within any establishment. [Amended 6-1-82 by Ord. No. 82-33]

7-4.5 Minors Prohibited. No minor under the age of 18 years shall be permitted to play billiards or pool in any licensed place under the provisions of this section, except upon consent of his parent or guardian.

7-4.6 Loitering Prohibited. No loitering of minors under the age of 18 years shall be permitted in billiard or pool rooms or bowling alleys. The window shades of all places coming under the provisions of this section, when used for the purpose covered by this license, while open for business, shall always be raised, so that the interior thereof may be seen.



7-5 **Circuses.**

7-5.1 License Required. No person shall operate or conduct within the township any circus for the public where admission for entrance thereto is charged, without first obtaining a license.

7-5.2 Additional Application Information. In addition to the requirements of subsection 7-1.2, the applicant must show evidence of proper insurance coverage for workmen's compensation as provided by R.S. 34:15-71, and in addition, public liability insurance in an amount determined and approved by the township attorney. The policies shall be approved by the township attorney.

7-5.3 License Fee; Exemption. The fee shall be the sum of twenty-five (\$25.00) dollars for each day of operation; provided, however, if the applicant is a duly organized church or a duly

organized volunteer fire department or veterans organization of the township and the receipts are for their benefit, the fee shall be waived.

7-5.4 Issuance of License. The license shall be granted by the township council after determining that the issuance of the license shall not be detrimental to the health, safety and welfare of the township.

7-6 Bicycles.

7-6.1 License Required. No person shall ride, operate or propel a bicycle upon any street or other public highway in the township without obtaining a proper license tag and attaching it to such bicycle.

7-6.2 Rented Bicycles. No person shall rent or hire out a bicycle without obtaining a proper license tag and attaching it to such bicycle.

7-6.3 Application. In lieu of the provisions of subsection 7-1.2, an application for a license to own and operate a bicycle shall be made

to the chief of police in writing upon a form approved by the township council. Upon approval of an application, the chief of police shall provide, at the expense of the township, a proper license tag which shall be attached to the frame of the bicycle in a substantial manner. The removal of such a tag, except by proper authority, shall be a violation of this section.

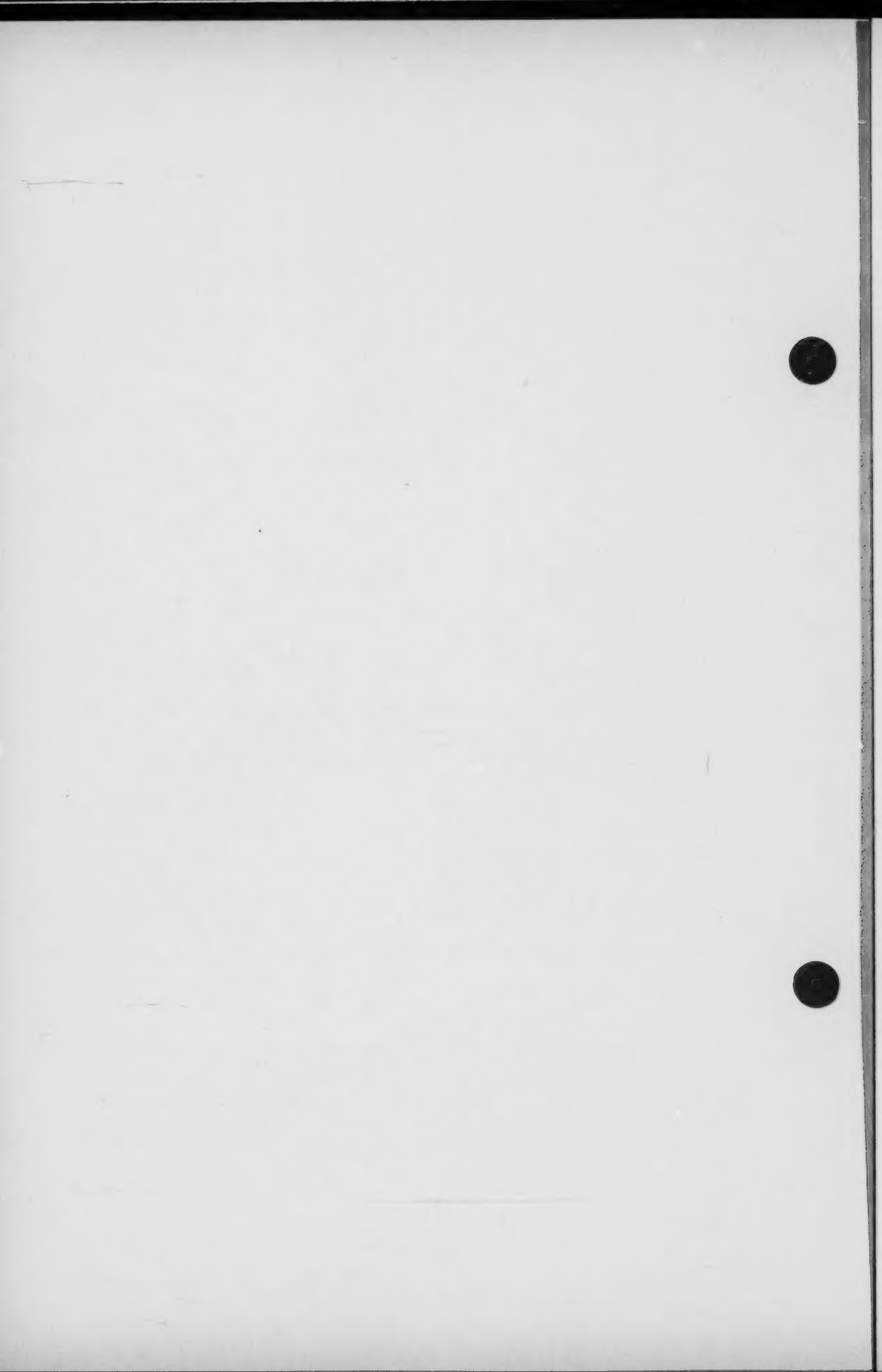
7-6.4 License Fee. A license fee of fifty (\$.50) cents shall be charged per year.

7-6.5 Bicycle Vendors.

a. Persons engaged in the business of buying second hand bicycles are required to make a daily report to the chief of police specifying:

1. The name and address of the person from whom each bicycle is purchased.

2. The description and frame number of each bicycle purchased and the number of the metallic license plate attached thereon, if any.

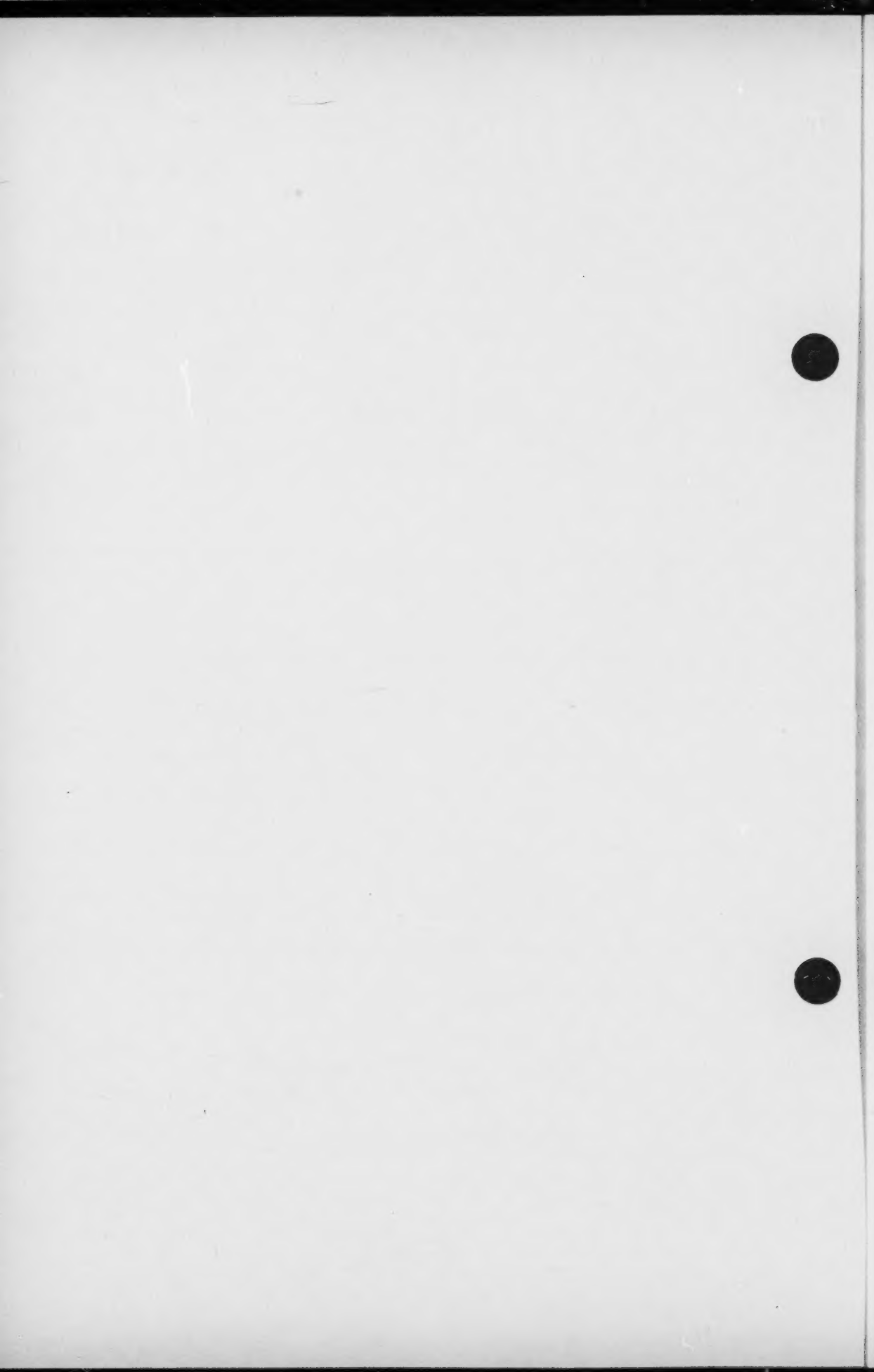


b. All persons engaged in the business of selling new or secondhand bicycles are hereby required to make a daily report to the chief of police giving a list of all sales made by such dealers, which shall include the following:

1. The name and address of each person to whom a bicycle is sold.

2. The kind, description and frame number thereof, and the number of the metallic license plate attached thereto, if any.

7-6.6 Transfer of Ownership. It shall be the duty of every person who sells or transfers ownership of any bicycle to report such sale to the chief of police within five days from the date of sale or transfer and deliver to the chief of police the registration card issued to the seller as licensee thereof, together with the name and address of the person to whom the bicycle was sold or transferred. It shall be the duty of the purchaser or transferee of such bicycle to apply for a transfer of registration



within five days of the sale or transfer. A fee of twenty-five (\$.25) cents shall be paid for each transfer.

7-6.7 Prohibited Conduct. No person shall willfully or maliciously remove, destroy, mutilate or alter the number of any bicycle frame licensed pursuant to this section, nor shall any person remove, destroy, mutilate or alter any license plate, seal or registration card, during the time in which the plate, seal or card is operative.

7-6.8 **Safety Standards.** Every license issued hereunder shall be deemed to have been granted subject to the following conditions:

a. A bicycle, when in use on a street at night, shall carry at least one lighted lamp on its front. The lamp shall show a white light and be of such nature and so displayed that it may be seen at least 200 feet distant in the direction toward which the bicycle is proceeding. If the front lamp is so arranged that it will show a red light visible for a distance of

at least 200 feet in the rear thereof, no red light attached to the rear of the bicycle shall be necessary, but where the front lamp does not show such a red light, there shall be attached to the rear of the bicycle one lighted lamp showing a red light or red reflector visible for a distance of at least 200 feet from the rear thereof, from one-half hour after sunset to one-half hour before sunrise.

b. Bicycles shall be equipped with an audible signal which can be heard easily at a distance of 200 feet.

c. The rider of a bicycle shall not allow it to proceed in a street by inertia momentum, with his feet removed from the pedals, remove both hands from the handlebars while riding the bicycle, practice any trick or fancy riding in a street, or carry another person upon the bicycle.

d. No person shall ride a bicycle, tricycle or similar machine on a sidewalk, or in any public park.

e. No rider of a bicycle shall hold fast to or hitch onto automobiles or other vehicles.

f. No bicycle shall be ridden faster than is reasonable and proper, but every bicycle shall be operated with regard to the safety of the operator and of any and all other persons using the sidewalks, streets, and other public highways of the township.

g. No person shall ride or propel a bicycle upon any street or other public highway in the township abreast of more than one other person riding or propelling a bicycle.

h. Every person riding or propelling a bicycle upon any street or public highway in the city shall observe all traffic rules and regulations applicable thereto, and shall turn only at intersections, signal for all turns, rides at the right hand side of the street or highway, pass to the left when passing overtaken vehicles and individuals that are slower moving and pass vehicles to the right when meeting.

i. All persons operating and propelling a bicycle shall comply with the motor vehicle and traffic regulations of the State of New Jersey.

7-7 **Junk Yards and Junk Wagons.**

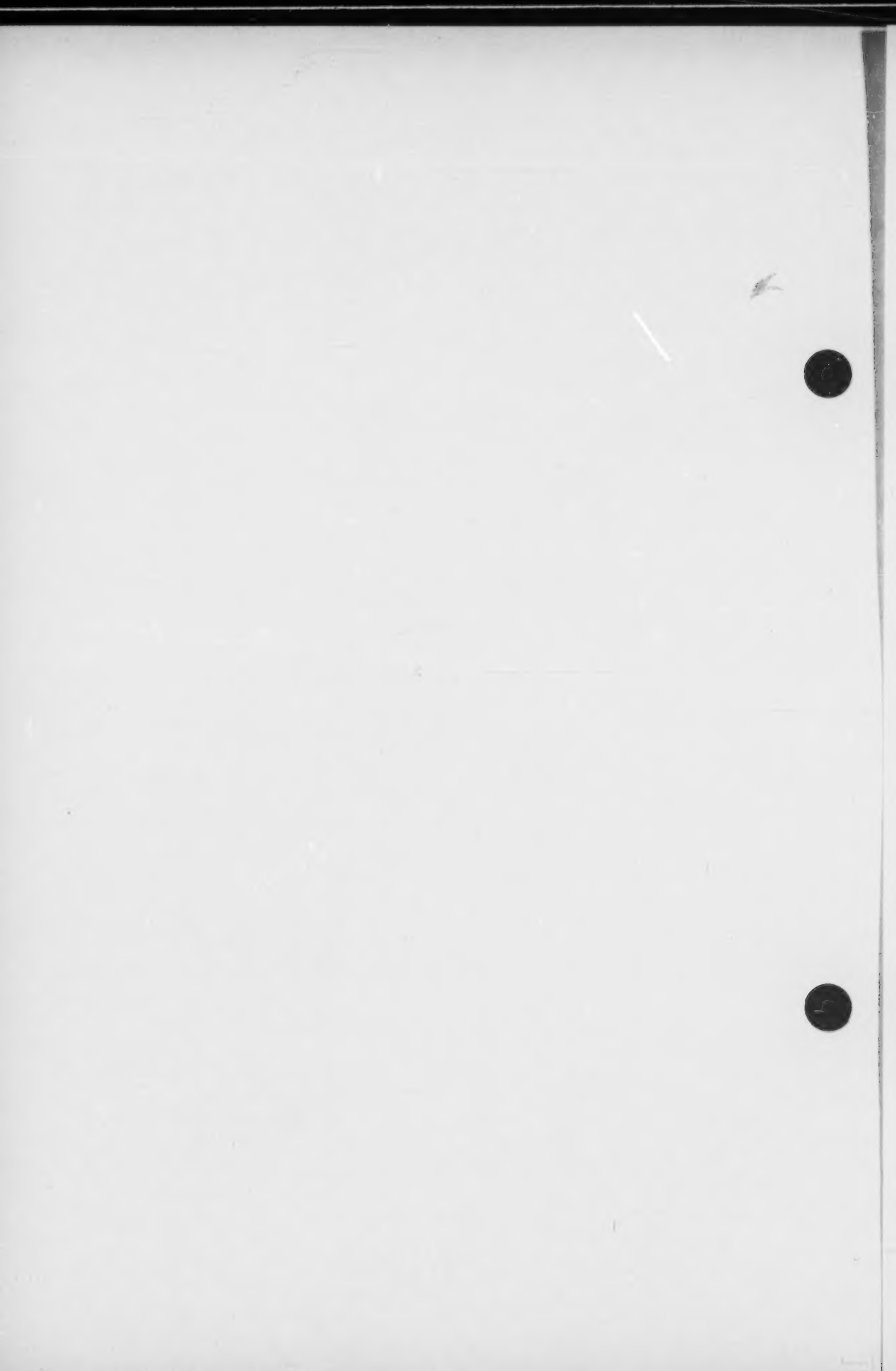
7-7.1 License Required. No person shall keep what are called junk shops, junk yards, junk carts, wagons, automobile wagons, boats or other vehicles or vessels for use in carrying on the business of dealing in junk, rags, bones, old rope, old iron, old automobiles, brass, copper, tin, lead and other old metals, old bottles, old glass, old tinware or any other secondhand articles within the corporate limits of the township without a license.

7-7.2 Separate License for Each Cart or Wagon Required. Every person dealing in junk as described in subsection 7-7.1 shall obtain a license for the keeping of a junk shop or junk yard for storage, and a separate license also for each cart, wagon, boat or other vehicle or vessel.

7-7.3 License Fees. The fees for a license to keep a junk shop or junk yard either for the purchase, sale or storage of junk thereat in the township shall be five hundred (\$500.00) dollars.

The fees for a license to keep, use and drive any vehicle or boat in the township for the purchase, sale or collection of junk shall be fifty (\$50.00) dollars.

7-7.4 Fence Required. It shall be unlawful to maintain a junk shop, junk yard or place of business for storing in, a place for the purchase, collection or sale of junk, rags, bones, old rope, old iron, brass, copper, tin, lead and other old metals, old bottles and glass, old tinware or other secondhand articles unless the premises facing the public highway are fenced in with a solid board or metal fence to the height of not less than eight feet.



7-7.5 Records Required.

a. Every keeper of a junk shop, junk yard, cart, wagon, vehicle or boat shall provide and keep a book, in which shall be plainly written and recorded at the time of each purchase a description of the article or articles so purchased, the name and residence of the person from whom such purchase was made and the day and the hour of such purchase.

b. The book shall at all reasonable times be open to the inspection of the mayor, the members of the township council, the chief of police, any public officer, or any person authorized in writing for the purpose by the mayor and council.

c. It shall not be necessary for any person licensed to keep a junk shop, junk yard, cart, wagon, vehicle or boat to keep a record of the purchase of rags or paper where the price paid is one (\$1.00) dollar or less.

7-7.6 Resale for 48 Hours Prohibited. It shall be unlawful for any person engaged in the keeping of a junk shop, junk yard or any establishment in the township for the purchase, collection, storage or sale of junk, rags, bones, old rope, old iron, brass, copper, tin and other old metals, old bottles, and glass, old tinware or other secondhand articles to resell, ship, deliver or transfer possession of the same for a period of 48 hours after taking possession of the same, unless and until a notice in writing is served upon the chief of police, giving a detail description of all such goods and chattels and the place or premises where the same are located and receiving a certificate from the chief of police or his subordinate designated by him for that purpose, certifying that the goods and chattels have been inspected.

7-7.7 Additional Regulations.

a. No keeper of a junk shop, junk yard, cart, wagon, vehicle or boat shall receive or purchase any goods, article or other thing what-

soever from any minor, apprentice or servant without satisfactory proof of the owner's consent to such sale.

b. No keeper of a junk shop, junk yard, cart, wagon, vehicle or boat shall purchase or receive in the way of such business any goods before 7:00 a.m. and after sunset.

c. Every person employed by the licensee under this section to draw, drive or propel any vehicle, cart, wagon, boat or vessel or to handle or do business at a junk shop or junk yard for such licensee shall not be less than 21 years of age.

d. If any goods, articles or things shall be advertised in any newspapers published or circulated in the township as having been lost or stolen, and if the goods, articles or things are so advertised or any part or portion thereof shall then be or thereafter come into the possession of any keeper of a junk shop, junk yard, cart, wagon, vehicle or boat, he shall forthwith give information thereof in writing to

the police department or the municipal judge and shall also state from whom and when the same was received.

e. Every keeper of a junk shop or dealer in junk who shall receive or be in possession of any goods, articles or things which may have been lost or stolen or alleged or supposed to have been stolen shall forthwith on a demand to view the same, present the same to the mayor, municipal judge, any member of the council, chief of police, any police officer or any person authorized in writing for the purpose by the mayor and council.

f. No license for a junk shop or junk yard shall entitle any person to keep such shop or yard in any place other than that which is specified in the license.

g. No keeper of a junk shop, junk yard, cart, wagon, vehicle or boat shall receive in the line of his business any article or thing by way of pledge or pawn.

7-8 Automatic Amusement Devices.

7-8.1 License Required. It shall be unlawful to maintain, use, operate or conduct in any public or quasi-public place, or in any building, store, or other place wherein the public is invited or wherein the public may enter in the township, or to permit such maintenance, use, operation, or conduct, of any automatic amusement game or device of the type commonly known and designated as automatic baseball, pinball, electronic amusement device of the type exemplified by "Space Invaders," or any other automatic or electronic amusement device, unless the owner of the game or device has first obtained a license for that purpose from the township council.

[Amended 1-19-82 by Ord. No. 82-1]

7-8.2 Additional Application Information. In addition to the information required by subsection 7-1.2, the following shall be provided.

 a. The number and types of devices to be licensed.

b. The consent of the owner of the premises if the applicant is not the owner.

7-8.3 License Fee. The license fee shall be one hundred (\$100.00) dollars for each device, provided that if any license is issued after July 1 of any calendar year the fee shall be sixty (\$60.00) dollars for the remainder of the year. Notwithstanding anything to the contrary contained within this chapter, each amusement license granted under the provisions hereof shall expire on January 1 of the calendar year next following the year of issuance thereof. [Amended 1-19-82 by Ord. No. 82-1]

7-8.4 Issuance of License. Each license shall be granted only after a determination by the township council that the issuance of the license will not be detrimental to the public health, safety, welfare, and morals of the citizenry of the Township of Piscataway. The township council may, if it so desires, in its sole discretion, hold public hearings regarding the issuance of any license requested in



accordance with the provisions of this chapter. The township council may consider such factors as the access of the device or machine to children; the hours of operation for the device or machine in question; the proximity of such device or machine to a school or other public building; the number of such devices or machines previously approved for the same premises; the degree to which the grant of the license may create a tendency toward crowding or loitering; and such other factors as the council deems in accordance with the public interest in deciding whether to grant any license requested or whether to hold a hearing with regard to any application for such license. [Amended 1-19-82 by Ord. No. 82-1]

7-8.5 Gambling Prohibited. No device, game or amusement licensed shall be used for purposes of gambling, or for violating any of the ordinances of the township or any of the laws of the State of New Jersey or of the United States.

7-8.6 Penalties. The maintenance, use, operation, or conduct of any device, game, or machine in violation of this section, without a license as required herein shall subject the owner of the premises on which such device, game, or machine is maintained, used, operated, or conducted to a fine within the general jurisdictional limits of the municipal court of the Township of Piscataway. Each day on which such device, game, or machine is maintained, used, operated or conducted without such license may constitute a separate violation, within the discretion of the municipal court of the Township of Piscataway. [Added 1-19-82 by Ord. No. 82-1; amended 3-4-86 by Ord. No. 86-6]

7.9 **Motor Vehicle Junk Dealers.**

7-9.1 License Required. No person shall engage in the business of motor vehicle junk dealer in the township without first obtaining a license to do so.

7-9.2 Definition. The term "motor vehicle junk dealer" shall mean any dealer engaged in the business of storing, displaying, buying or selling secondhand automobiles or parts thereof which are not intended or fit for reconditioning for use for highway transportation.

7-9.3 Additional Application Information. In addition to the requirements of subsection 7-1.2, the application shall describe the premises upon which the business is to be conducted, giving the street frontage and approximate depth of the premises. The township clerk shall present the application to the township council at its next meeting and shall issue a license if approved by the council.

7-9.4 Fence Required. Any motor vehicle junk yard which may be conducted on an open lot in the township shall have the lot fenced in by a solid fence at least six feet in height, and such fence shall be set back at least 40 feet

from any municipal highway near which it is located and at least 20 feet from any other property line.

7-9.5 Prohibited Conduct.

a. It shall be unlawful to stack, pile or place any part or parts of the motor vehicles closer to the curb line of the street adjacent to or in front of the premises than 40 feet, and all parts of motor vehicles shall be so piled, stacked or placed on the premises as to prevent injury to persons lawfully passing along the sidewalk in front of the premises in the event that the piles, stacks or parts otherwise placed should fall or become dislodged.

b. It shall be unlawful to stack, pile or place any part or parts of the motor vehicles closer than 20 feet to the side line of the property on which an automobile junk yard business is being conducted.

c. All gasoline, fuel or other explosive material shall be drained and removed from any motor vehicle within 24 hours after it is re-

ceived on any premises located in the township, and the gasoline, fuel or other explosive material shall either be removed from the premises or kept in a leakproof tank to be buried on the premises to a sufficient depth so that the top of the tank shall not be nearer to the surrounding ground level than two and one-half feet, and the tank, together with the filling parts and vents, shall not be placed nearer than 20 feet to any building located on the premises or upon any adjacent premises, and shall be kept back a distance of 50 feet from the curb line of the street in front of or adjacent to the premises.

d. It shall be unlawful for any automobile junk dealer to permit any vehicle received on any premises in the township to be or remain in the open in such a manner that rainwater shall collect and remain in any of the parts thereof for a longer period than 24 hours.

e. All parts of any motor vehicle so designed as to collect and hold rainwater if left exposed in the open shall be housed in a watertight building with a foundation and floor so constructed of concrete, brick or other suitable material as to prevent the harboring therein of any rats, mice or vermin.

f. All inflammable material removed from the motor vehicles and not removed from the premises or immediately destroyed shall be kept or placed in a fireproof building or room.

g. It shall be unlawful to stack, pile or place parts of motor vehicles upon the premises in such a manner as to create a fire hazard or to create a place for the harboring or breeding of rats, mice or vermin.

h. No license for a junk shop or junk yard shall entitle any person to keep such shop or yard in any place other than that which is mentioned and specified in such license.

i. No keeper of a junk shop, junk yard, cart, wagon, vehicle or boat shall receive in the line of his or her business any article or thing by the way of pledge or pawn.

7-9.6 Required Reports. The make, model, engine number and serial number of any motor vehicle received by any person engaged in the business of motor vehicle junk dealer shall be reported, within 24 hours after the receipt thereof and before the same is dismantled or otherwise disposed of, to the chief of police of the township.

7-9.7 Inspection. The township health officer is directed, during reasonable business hours, to make reasonably periodic and effective inspection of all of the premises and buildings for the purpose of ascertaining that the business is being conducted on the licensed premises in accordance with the provisions of this section.

7-9.8 License Fee. Every person engaged in the business of motor vehicle junk dealer shall pay a license fee of five hundred (\$500.00) dollars..

7-10 **Tobacco Vending Machines.**

7-10.1 License Required. No person shall keep, maintain, operate or possess in any store or building in the township, wherein the public is invited or permitted or where the public may enter, any tobacco vending machine as hereinafter defined without first obtaining a license from the township clerk.

7-10.2 Definitions. As used in this section:

a. "Tobacco vending machine" shall mean any device, machine or equipment or piece of mechanical or electrical equipment which, upon the insertion of a coin or token into a slot on the machine, results in dispensing or making available to the public any tobacco product.

b. "Licensed place" or "licensed premises" shall mean the place or premises wherein the applicant proposes to keep the tobacco vending machine as set forth in the application.

7-10.3 Application. A separate application for each place at which tobacco vending machines are to be located or operated shall be filed by the owner with the township clerk showing the name of the applicant, post office address, type of vending machine, location of the licensed place and the name of the owner of the premises and such information as may be required by the application. The application shall be on a form furnished by the clerk and shall be sworn to if the applicant is an individual, or by a duly authorized officer or representative if the applicant is not an individual.

7-10.4 Fees. The license fee for each tobacco vending machine shall be five (\$5.00) dollars. The license shall be for a period of one year or any part thereof and expire on June 30.



The license fees are for the purpose of regulating tobacco vending machines and to cover the cost of the necessary inspections and regulations. Licenses shall not be transferable but the licensee may remove a licensed tobacco vending machine and substitute another tobacco vending machine in lieu thereof. The license shall be displayed on the licensed premises at all times.

7-10.5 Exceptions. Vending machines maintained by religious, charitable, benevolent, fraternal or non-pecuniary associations or a volunteer fire company, rescue squad or similar association not incorporated for profit are exempted from the provisions of this section. This subsection shall include any type of vending machines or automatic amusement devices known as bagatelle, automatic baseball, pin amusement games or other automatic amusement devices for which a license is required.



7-10.6 Cooperation with Township Officials;
Suspension or Revocation of License.

a. The licensee shall cooperate at all times with the health inspector, chief of police, building inspector, township clerk, or other township officers when required to do so to obtain information which will enable them to safeguard the health and safety of the public. For failure to render such cooperation, information or knowledge relative to the tobacco vending machines, the clerk may temporarily suspend the license. Thereafter written notice of the charges shall be preferred by the clerk and mailed to the licensee, and a hearing shall be held ten days after service of the notice by the council for permanent revocation or further suspension of the license.

The license may also be revoked upon proof of circumstances which are inimical to the health, welfare and safety of the public, but only after a hearing before the township council as above provided.

b. In the event a license is not renewed, or if a license is revoked prior to its expiration date, the licensee shall remove the tobacco vending machine or machines from the township within five days or in default thereof shall be presumed to have abandoned the machines to the township. The five days shall run from the expiration date of the license or from the date when the council revokes the license.

By the acceptance of the license, the licensee agrees that the township may, after the five days have elapsed, cause the machines to be destroyed or otherwise disposed of.

7-11 Sunday Bingo and Raffles

Games of chance may be conducted on Sundays under licenses issued by the township for the holding, operating and conducting of games of chance known as bingo and raffles pursuant to R.S. 5:8-31 and R.S. 5:8-58, and such licenses shall specifically state that the games of

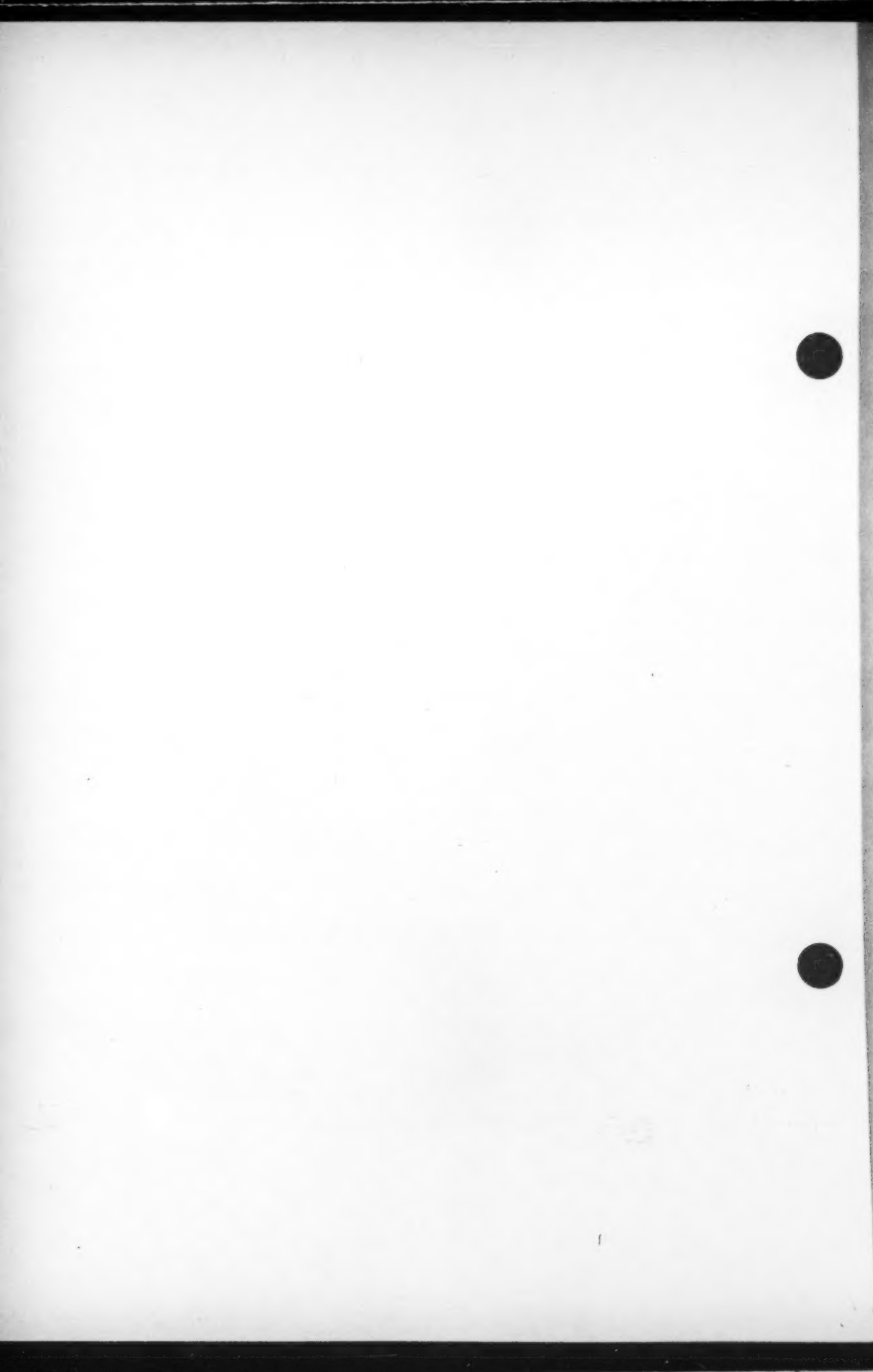
chance shall be conducted on Sunday. In all other respects the Sunday licenses shall conform with the requirements of Bingo Licensing Law and the Raffles Licensing Law (L. 1954, c. 6, 6.32, 1 et seq. and L. 1954, c. 5, p. 17, 1 et seq.).

7-12 Sales From Residential Premises. [Added 1-19-82 by Ord. No. 82-1]

The occasional sale of goods, wares, or merchandise on or from property principally used as a residence (commonly known as garage, yard, patio, or rummage sale) is permitted, subject to and in compliance with the following terms and condition:

a. No person shall accept for sale, or sell, at any such sale, any goods, wares, or merchandise from any commercial business or enterprise on a consignment or resale basis.

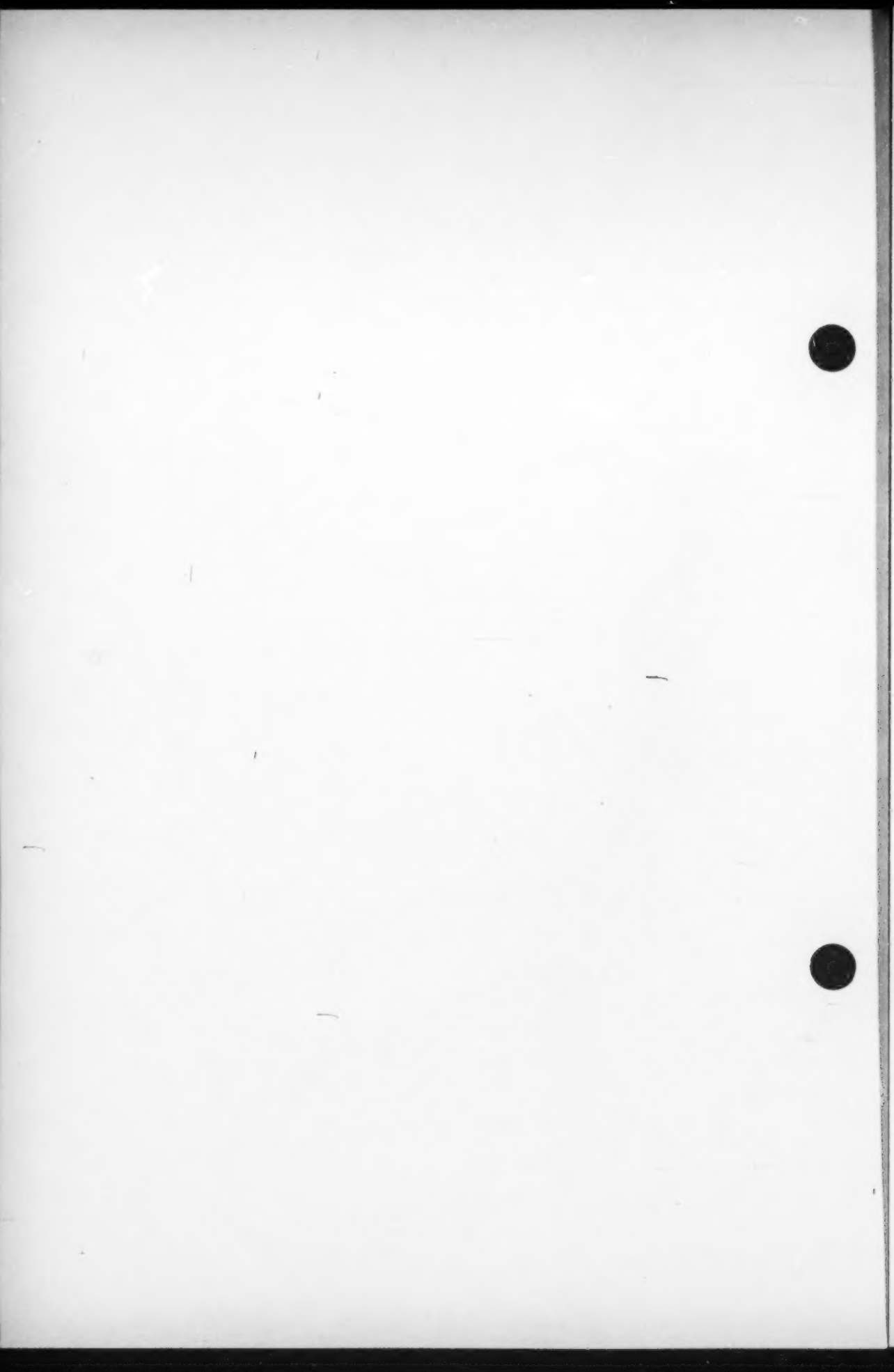
b. No more than four such sales shall be conducted per year at any one premises.



c. No such sale shall take place other than between the hours of 8 a.m. and 6 p.m. prevailing time and shall exceed four consecutive days in duration.

d. Any such sale may be advertised by not more than two signs posted within the township, neither of which shall exceed two feet by three feet in area. No sign so erected shall be immediately removed at the end of the last day upon which the sale is held. No sign erected in accordance with this section shall be placed in such a manner so as to constitute a traffic hazard or an impediment to safety.

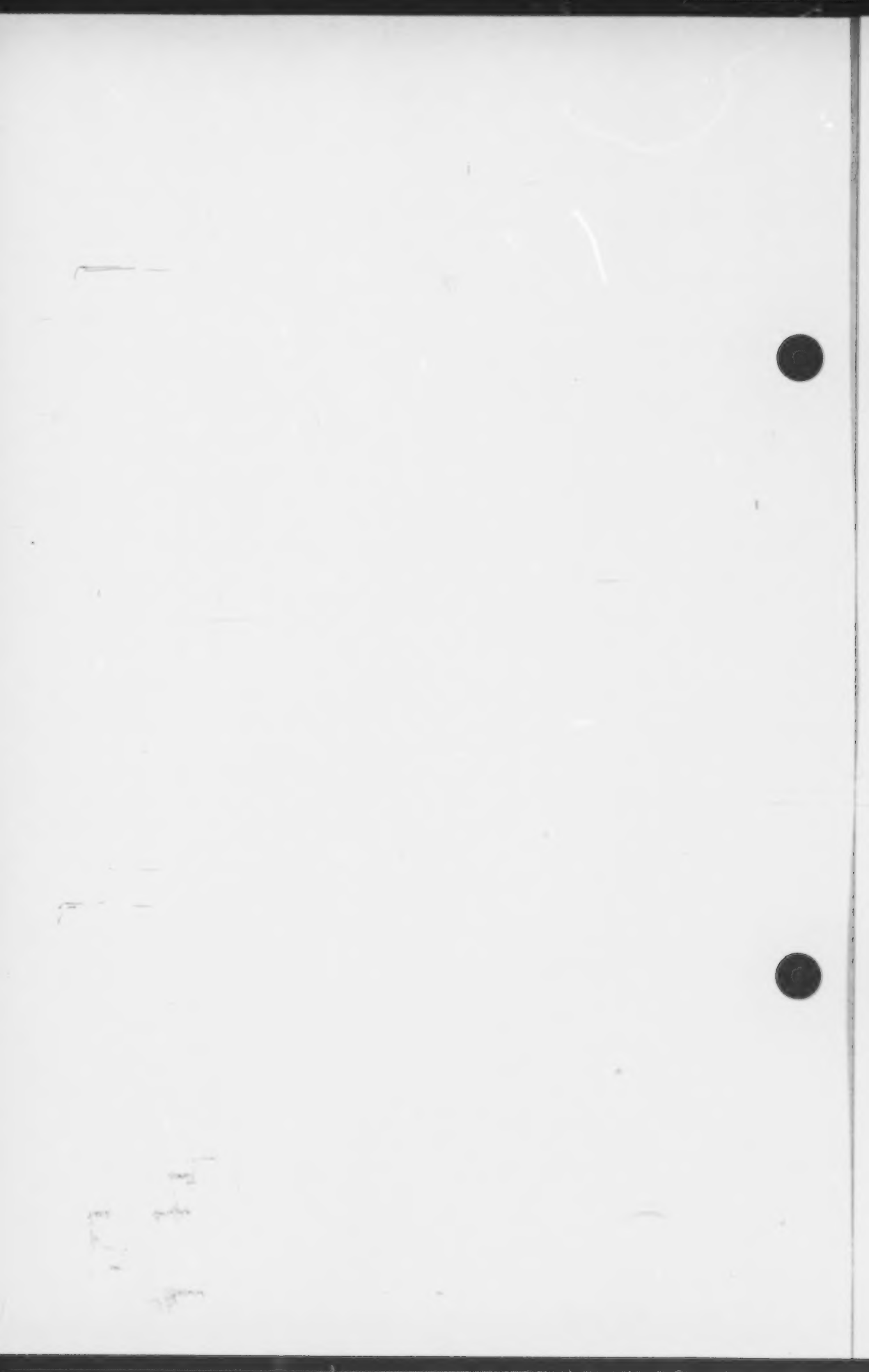
e. Notwithstanding the previous paragraph, it shall not be a violation of this section to advertise such sale within a classified advertisement section of a newspaper circulating in the community, on local cable television, or in any other manner not inconsistent with this section, provided that each such advertisement reflects the limitation of hours and days provided herein. The use of such advertisements as



are described in this paragraph shall be deemed prima facie evidence that a sale as described herein is being conducted.

f. No such sale shall be conducted so as to create a traffic or safety problem in the township. The person owning or occupying the premises at which such sale is to be conducted, or the person conducting the sale, or both, shall take all necessary precautions to insure that no traffic or parking problems, or trespasses onto nearby property by prospective or actual customers of the sale, shall occur.

BOROUGH OF NORTH ARLINGTON



ORDINANCE OF THE BOROUGH OF NORTH ARLINGTON

**AN ORDINANCE TO REGULATE CANVASSING
WITHIN THE BOROUGH OF NORTH ARLINGTON,
COUNTY OF BERGEN AND STATE OF NEW
JERSEY, AND PROVIDING PENALTIES FOR
THE VIOLATION THEREOF.**

BE IT ORDAINED by the Mayor and Council
of the Borough of North Arlington in the County
of Bergen and State of New Jersey, as follows:

SECTION 1. It shall be unlawful for any
person to canvass or solicit from house to house
or from person to person, in the Borough of
North Arlington, without first obtaining a
license therefor from the Chief of Police or
other officer in charge of Police Headquarters,
as hereinafter provided.

SECTION 2. Any person desiring to
canvass, or solicit from house to house or from
person to person, shall first make an appli-
cation in writing to the Chief of Police or
other officer in charge of Police Headquarters.



Said application shall be made upon blank forms to be furnished by the Borough of North Arlington and shall set forth the name and address of the person making such application, his date and place of birth, height, weight, color, marital status, length of present residence, previous criminal record, general description of clothing worn, name and address of employer, description of the project for which applicant is canvassing, copy of any and all contracts, agreements and other paper writings to be signed by the persons to be approached by the canvasser, certified to be true by the applicant's employer.

Each applicant shall be fingerprinted before the permit shall be issued.

SECTION 3. Before the Chief of Police or other officer in charge of Police Headquarters shall issue a license to canvass, he shall be satisfied that the applicant, from an examination of the application or other further investigation to be made at the discretion of such

officer, is of good moral character and that the project for which he is canvassing, is free from fraud.

SECTION 4. If the Chief of Police or other officer in charge of Police Headquarters is satisfied with the sufficiency of the application, he shall issue a permit or license upon forms to be furnished by the Borough of North Arlington signed by the issuing officer and containing the following information concerning the applicant: his full name and address, place and date of birth, height, weight, color, marital status, name and address of employer, the nature or description of the project for which he is canvassing, the date of issue, date of expiration, daily hours during which canvassing may be carried on, and the licensee's signature.

SECTION 5. All permits or licenses shall be placed in a transparent license or permit holder, to be furnished by the Borough and worn by the licensee on the lapel or other appropriate place of the outer garment of his wearing

apparel at all times during which the licensee is engaged in canvassing or soliciting. The license holder shall be furnished by the Borough at a fee of 25¢ which shall be returned to the licensee upon the return of the license and the license holder. Upon the expiration of the license, the license and the license holder shall be returned to the Chief of Police or other officer in charge of Police Headquarters.

SECTION 6. No license or permit shall be granted to canvass between 5 P.M. and 9 A.M., provided however that no canvassing shall be permitted on legal holidays, Sundays, and during the month of December.

SECTION 7. All licensees shall be courteous, conduct themselves in a lawful manner and refrain from becoming an annoyance to persons solicited.

SECTION 8. Any person engaged in the delivery of goods, wares, merchandise or other article or thing in the regular course of busi-



ness to the premises of persons either ordering or entitled to receive the same, shall be exempt from the operation and effect of this ordinance.

SECTION 9. Any permit or license granted hereunder may be revoked or rescinded by the Chief of Police or other officer in charge of Police Headquarters, upon the-failure of the licensee to comply with the terms and provisions of this ordinance, or if, after the license had been granted, the Chief of Police or other officer in charge of Police Headquarters is satisfied that the licensee is not of good moral character or that he is canvassing for a fraudulent project.

SECTION 10. Any person who shall violate a provision of this ordinance, or fail to comply therewith, shall for each and every such violation and non-compliance, forfeit and pay a penalty not to exceed the sum of \$200.00, or be imprisoned in the Bergen County Jail for a period of not more than ninety days or both.

SECTION 11. If any section or part of section or paragraph of this ordinance is declared invalid or unconstitutional it shall not be held to invalidate or impair the validity, force or effect of any other section or sections or part of a section or paragraph of this ordinance.

SECTION 12. All ordinances or parts of ordinances inconsistent herewith are hereby repealed and this ordinance shall take effect immediately upon passage and publication according to law.

BE IT RESOLVED that public notice of the consideration of the above entitled ordinance be published in the North Arlington Leader newspaper.

PUBLIC NOTICE

Public notice is hereby given that at a regular meeting of the Mayor and Council of the Borough of North Arlington held on Tuesday, May 2, 1950, the foregoing ordinance was intro-

duced and passed on its first reading and that the said ordinance will be taken up for further consideration and final passage at a regular meeting of the Mayor and Council to be held in the Council Chambers, Borough Hall, North Arlington, New Jersey, on Tuesday, May 16, 1950, at 9:00 P.M., or as soon thereafter as the matter can be reached, at which time and place all persons who may be interested therein shall be given an opportunity to be heard concerning the same.

/s/
Louis E. Gaeckle
Mayor

Attest:

/s/
Robert B. Galloway
Borough Clerk

Dated: May 2, 1950.

BOROUGH OF PARAMUS

EXHIBIT 7

BOROUGH OF PARAMUS

**ORDINANCE No. 80-7
NOTICE**

**AN ORDINANCE AMENDING CHAPTER 21, SECTION 11 OF
THE REVISED ORDINANCES OF THE BOROUGH OF
PARAMUS, 1969, ENTITLED, "SOLICITORS, CANVASS-
ERS, PEDDLERS AND HAWKERS"**

BE IT ENACTED AND ORDAINED by the Governing
Body of the Borough of Paramus as follows:

SECTION 1

Section 11 of Chapter 21 of the Revised Ordinances of the Borough of Paramus 1969 entitled, "Solicitors, Canvassers, Peddlers and Hawkers", is hereby amended as follows:

21-11 Use of public places; time for conducting business.

(a) No solicitors, canvassers, peddlers or hawkers shall:

(1) Have any exclusive right to any location in any public place;

(2) Be permitted to maintain a stationary location; or

ORDINANCE OF THE BOROUGH OF PARAMUS

**NOTICE
BOROUGH OF PARAMUS**

NOTICE IS HEREBY GIVEN that the following ordinance was passed on second and final reading and adopted by the Mayor and Council of the Borough of Paramus, Bergen County, New Jersey, at a regular meeting of said Mayor and Council held at the Borough Hall in Paramus, N.J. on the 26th day of July, 1956.

HARVEY W. HEBBERD
Borough Clerk

ORDINANCE NO. 357

**AN ORDINANCE DEFINING REGULATING AND
LICENSING SOLICITORS AND CANVASSERS IN
THE BOROUGH OF PARAMUS AND PROVIDING
PENALTIES FOR THE VIOLATION THEREOF.**

BE IT ENACTED AND ORDAINED by the Mayor and Council of the Borough of Paramus, in the County of Bergen and State of New Jersey, as follows:

SECTION 1. Permit and License Required. It shall be unlawful for any solicitor or canvasser as defined in Section 2 of this ordinance to engage in such business within the corporate lim-

its of the Borough of Paramus without first obtaining a permit and license therefor in compliance with the provisions of this ordinance.

SECTION 2. Definition. A canvasser or solicitor is defined as any individual, whether resident of the Borough of Paramus or not, traveling either by foot, wagon, automobile, motor truck, or any other type of conveyance, from place to place, from house to house, or from street to street, taking or attempting to take orders for sale of goods, wares and merchandise, personal property of any nature whatsoever for future delivery, or for services to be furnished or performed in the future, whether or not such individual has, carries or exposes for sale a sample of the subject of such sale or whether he is collecting advance payments on such sales or not, provided that such definition shall include any person who, for himself, or for another person, firm, or corporation, hires, leases, uses, or occupies any building, structure, tent, railroad box car, boat, hotel room, lodging

house, apartment, shop, or any other place within the Borough for the sole purpose of exhibiting samples and taking orders for future delivery.

SECTION 3. Application. Applicants for permit and license under this ordinance must file with the Borough Clerk a sworn application in writing (in duplicate) on a form to be furnished by the Borough Clerk, which shall give the following information:

(a) Name and description of the applicant;

(b) Permanent home address and full local address of the applicant;

(c) A brief description of the nature of the business and the goods to be sold;

(d) If employed, the name and address of the employer, together with credentials establishing the exact relationship;

(e) The length of time for which the right to do business is desired;

(f) The place where the goods or property proposed to be sold, or orders taken for the sale thereof, are manufactured or produced, where such goods or products are located at the time said application is filed, and the proposed method of delivery;

(g) A photograph of the applicant, taken within sixty (60) days immediately prior to the date of filing of the application, which picture shall be 2" by 2" showing the head and shoulders of the applicant in a clear and distinguishing manner;

(h) The fingerprints of the applicant and the names of at least two reliable property owners of the County of Bergen and State of New Jersey, who will certify as to the applicant's good character and business respectability, or, in lieu of the names of references, such other available evidence as to the good character and business responsibility of the applicant as will enable an investigator to properly evaluate such character and business responsibility;

(i) A statement as to whether or not the applicant has been convicted of any crime, misdemeanor, or violation of any municipal ordinance, the nature of the offense and the punishment or penalty sustained therefor; and

(j) A statement by a reputable physician of the County of Bergen and State of New Jersey, dated not more than ten (10) days prior to submission of the application, certifying the applicant to be free of contagious, infectious, or communicable disease.

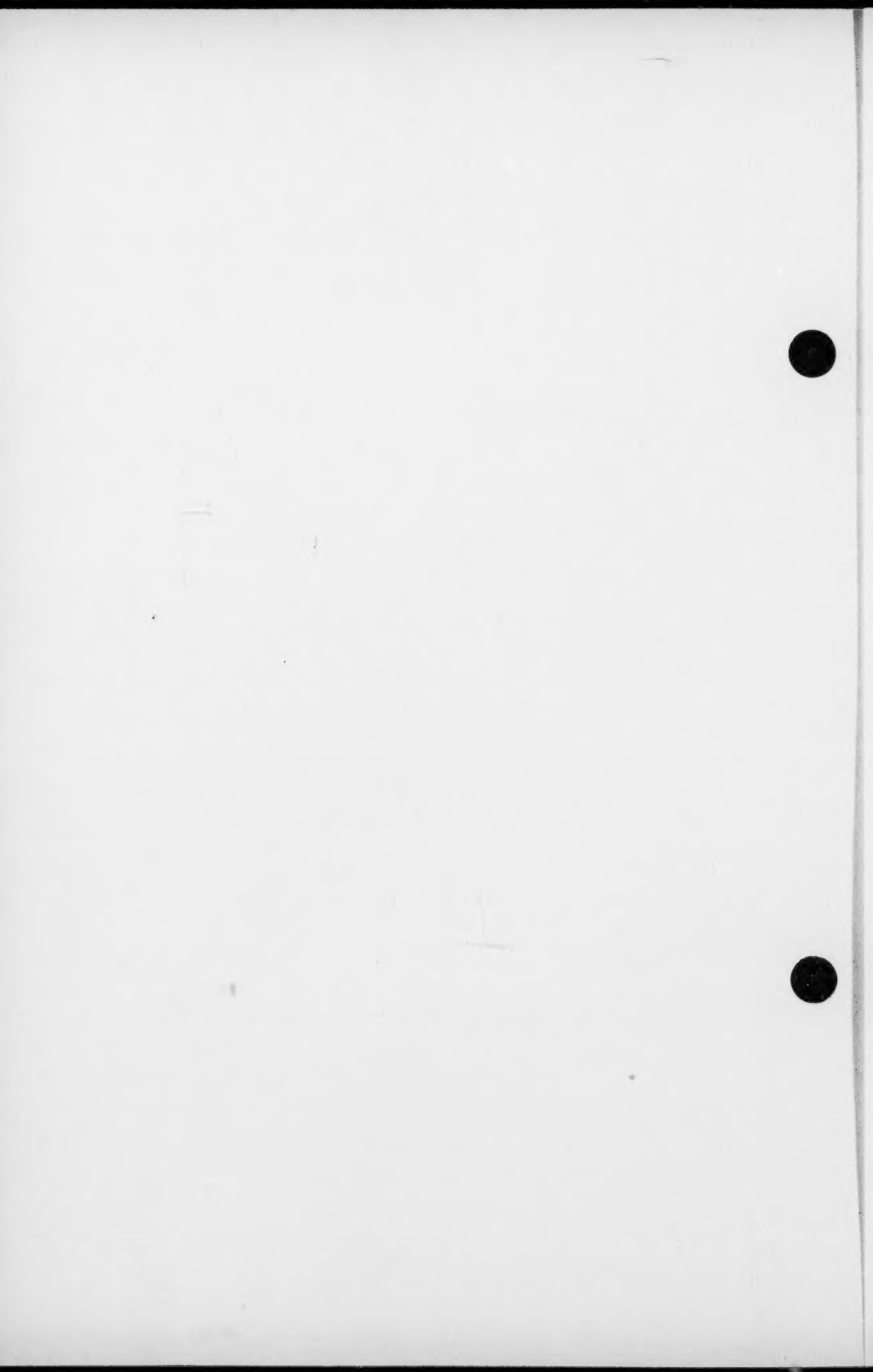
At the time of filing the application, a fee of Five (\$5.00) Dollars shall be paid to the Borough Clerk to cover the cost of investigation of the facts stated therein.

SECTION 4. Investigators and Issuance.

(a) Upon receipt of such application, the original shall be referred to the Chief of Police, who shall cause such investigation of the applicant's business and moral character to be made as he deems necessary for the protection of the public good.

(b) If as a result of such investigation, the applicant's character or business responsibility is found to be unsatisfactory, the Chief of Police shall endorse on such application his disapproval and his reasons for the same, and return the said application to the Borough Clerk, who shall notify the applicant that the application is disapproved and that no permit and license will be issued.

(c) If as a result of such investigation, the character or business responsibility of the applicant are found to be satisfactory, the Chief of Police shall endorse on the application his approval, execute a permit addressed to the applicant for carrying on of the business applied for and return said permit, along with the application to the Borough Clerk, who shall, upon payment of the prescribed license fee, deliver to the applicant his permit and issue a license. Such license shall contain the signature and seal of the Issuing Officer and shall show the name, address and photograph of said



licensee, the class of license issued and the kind of goods to be sold thereunder, the amount of fee paid, the date of issuance and the length of time the same shall be operative, as well as the license number and other identifying description of any vehicle used in such soliciting or canvassing. The Clerk shall keep a permanent record of all licenses issued.

SECTION 5. Fees. (a) The license fees which shall be charged by the Borough Clerk for such license shall be Twenty-five (\$25.00) Dollars and shall be for a six (6) month period.

(b) None of the license fees provided for by this ordinance shall be so applied as to occasion an undue burden upon interstate commerce. In any case where a license fee is believed by a license or applicant for license to place an undue burden upon such commerce, he may apply to the Mayor and Council for an adjustment of the fee so that it shall not be discriminatory, unreasonable, or unfair as to such commerce. Such application may be made before, at, or

within six (6) months after payment of the prescribed license fee. The applicant shall, by affidavit and supporting testimony, show his method of business and the gross volume or estimated gross volume of business and such other information as the Mayor and Council may deem necessary in order to determine the extent, if any, of such undue burden on such commerce. The Mayor and Council shall then conduct an investigation, comparing applicant's business with other businesses of like nature and shall make findings of fact from which he shall determine whether the fee fixed by this ordinance is unfair, unreasonable or discriminatory as to applicant's business and shall fix as the license fee for the applicant, an amount that is fair, reasonable and non-discriminatory, or, if the fee has already been paid, shall order a refund of the amount over and above the fee so fixed. In fixing the fee to be charged, the Mayor and Council shall have the power to base the fee upon a percentage of gross sale, or any

other method which will assure that the fee assessed shall be uniform with that assessed on businesses of like nature, so long as the amount assessed does not exceed the fees as prescribed by Section 5(a) of this ordinance. Should the Mayor and Council determine the gross sales measure of the fee to be the fair basis, he may require the applicant to submit, either at the time of termination of applicant's business in the Borough of Paramus or at the end of each three (3) month period, a sworn statement of the gross sales and pay the amount of fee therefor provided that no additional fee during any one calendar year shall be returned after the licensee shall have paid an amount equal to the annual license as prescribed in Section 5(a) of this ordinance.

SECTION 6. Bond. Every applicant, not a resident of the Borough of Paramus, or who being a resident of the Borough of Paramus, represents a firm whose principal place of business is located outside the State of New Jersey, shall

file with the Borough Clerk a surety bond running to the Borough in the amount of One Thousand (\$1,000.00) Dollars, with surety acceptable to and approved by the Borough Attorney, conditioned that the said applicant shall comply fully with all the provisions of the ordinances of the Borough of Paramus and the statutes of the State of New Jersey regulating and concerning the business of solicitor and guaranteeing to any citizen of the Borough of Paramus that all money paid as a down payment will be accounted for and applied according to the representations of the solicitor and further guaranteeing to any citizen of the Borough of Paramus doing business with said solicitor, that the property purchased will be delivered according to the representations of said solicitor. Action on such bond may be brought in the name of the Borough to the use or benefit of the aggrieved person.



SECTION 7. Badges. The Borough Clerk shall issue to each licensee at the time of delivery of his license a badge which shall contain the words "Licensed Solicitor," the period for which the license is issued and the number of the license, in letters and figures easily discernible from a distance of ten (10) feet. Such badge shall, during the time such licensee is engaged in soliciting, be worn constantly by the licensee on the front of his outer garment in such a way as to be conspicuous.

SECTION 8. Exhibition of License. Solicitors and canvassers are required to exhibit their licenses at the request of any citizen.

SECTION 9. Duty of Police to Enforce. It shall be the duty of any police officer of the Borough of Paramus to require any person seen soliciting or canvassing, and who is not known by such officer to be duly licensed, to produce his solicitor's or canvasser's license

and to enforce the provisions of this ordinance against any person found to be violating the same.

SECTION 10. Records. The Chief of Police shall report to the Borough Clerk all convictions for violation of this ordinance and the Borough Clerk shall maintain a record for each license issued and record the reports of violation therein.

SECTION 11. Revocation of License.

- (1) Fraud, misrepresentations, or false statement contained in the application for license;
- (2) Fraud, misrepresentation or false statement made in the course of carrying on his business as solicitor or as canvasser;
- (3) Any violation of this ordinance;
- (4) Conviction of any crime or misdemeanor involving moral turpitude; or

- (5) Conducting the business of soliciting, or of canvassing, in an unlawful manner or in such a manner as to constitute a breach of the peace or to constitute a menace to the health, safety, or general welfare of the public.

(b) Notice of the hearing for revocation of a license shall be given in writing, setting forth specifically the grounds of complaint and the time and place of hearing. Such notice shall be mailed by registered letter to the licensee at his last known address at least five (5) days prior to the date set for hearing.

SECTION 12. Appeal. Any person aggrieved by the action of the Chief of Police or the Borough Clerk in the denial of a permit or license as provided in Section 4 of this ordinance shall have the right of appeal to the Mayor and Council of the Borough of Paramus. Such appeal shall be taken by filing with the Council, within fourteen (14) days after notice

of the action complained of has been mailed to such person's last known address, a written statement setting forth fully the grounds for the appeal. The Council shall set a time and place for hearing on such appeal and notice of such hearing shall be given to the appellant in the same manner as provided in Section II of this ordinance for notice of hearing on revocation. The decision and order of the Council on such appeal shall be final and conclusive.

SECTION 13. Expiration of License. All licenses shall expire on the date specified on the License.

SECTION 14. Penalty. Any person violating any of the provisions of this ordinance shall upon conviction thereof be punished by a fine not to exceed Two Hundred (\$200.00) Dollars, or by imprisonment not to exceed ninety (90) days or both.

SECTION 15. Severance Clause. The provisions of this ordinance are declared to be severable and if any section, sentence, clause,

or phrase of this ordinance shall for any reason be held to be invalid or unconstitutional, such decisions shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this ordinance but they shall remain in effect, it being the legislative intent that this ordinance shall stand notwithstanding the invalidity of any part.

SECTION 16. Repeal of Conflicting Ordinances. All ordinances or parts of ordinances inconsistent with the provisions of this ordinance, be and the same are hereby repealed.

SECTION 17. Effective Date. This ordinance shall take effect from and after the passage and publication as provided by law.

APPROVED: July 26, 1956.

WARNER ELEMNER
President of the Council

ATTEST: Harvey W. Hebbard
Borough Clerk

The Clarion

August 2, 1956



(3) Be permitted to operate in any congested area where his operations might impede or inconvenience the public. The judgment of a police officer shall be deemed conclusive as to whether the area is congested or the public impeded or inconvenienced.

(b) All licenses shall be valid to operate on weekdays only between the hours of 9:00 A.M. and 6:00 P.M., except peddlers of food who shall be permitted to operate from 9:00 A.M. to 9:00 P.M. seven days a week subject to approval of the Board of Health.

APPROVED:
BOROUGH OF PARAMUS
BY: JOSEPH CIPOLLA
MAYOR

ATTEST:
By: JOAN C. MASEL,
BOROUGH CLERK

The Ordinance, the title of which is published herewith has been finally passed by the Borough Council of the Borough of Paramus, Bergen County, New Jersey on the 8th day of April, 1980.

JOAN C. MASEL,
Borough Clerk

TOWNSHIP OF WOODBRIDGE



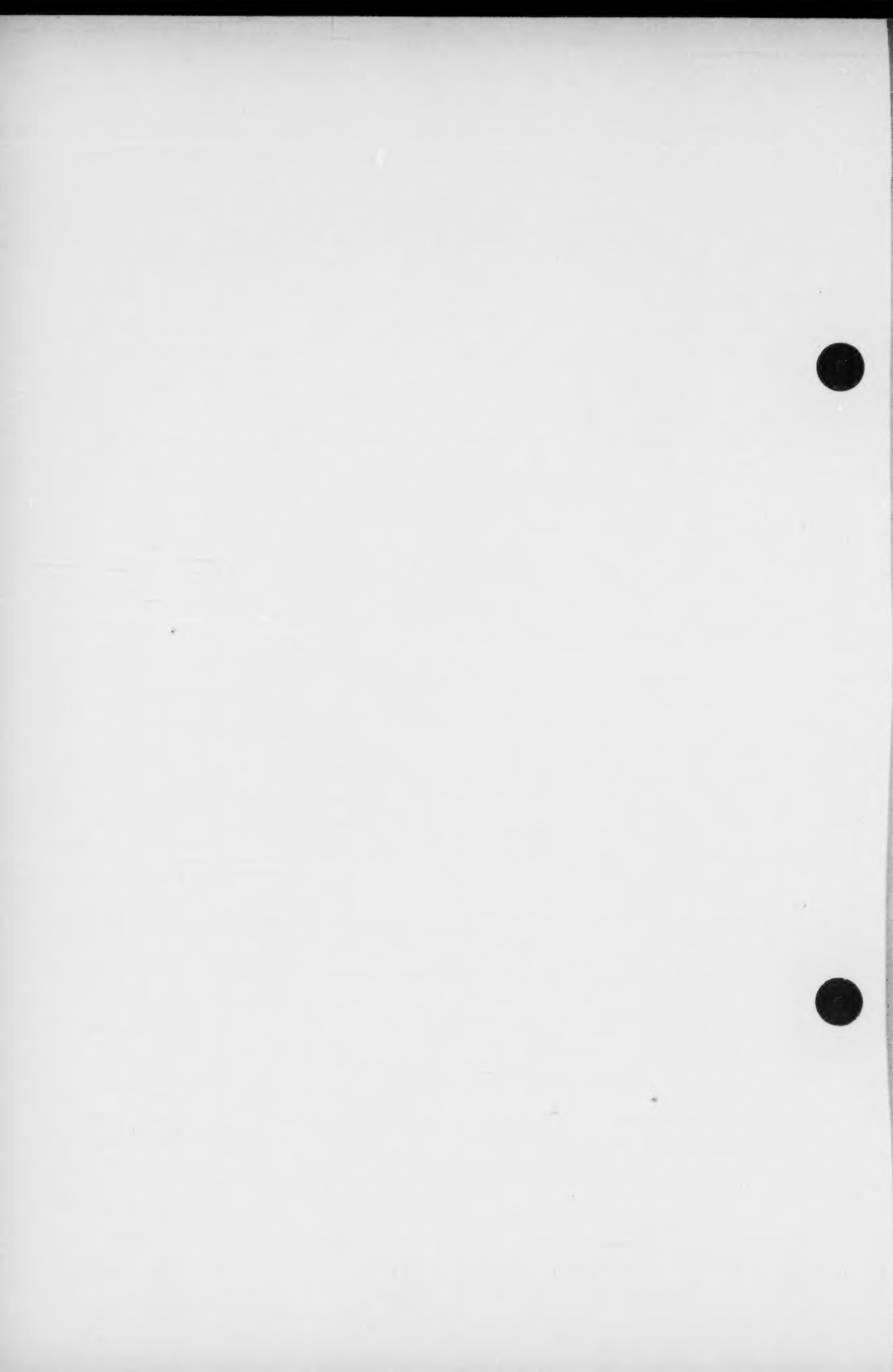
EXHIBIT 9

REVISED ORDINANCES OF WOODBRIDGE

Article 7. PEDDLERS, SOLICITORS AND TRANSIENT MERCHANTS

NOTE: For state law authorizing a municipality to license and regulate hawkers, peddlers, and itinerant vendors of merchandise, see R. S. 40:52-1(c).

Special licenses to hawk, peddle and vend issued by the county clerk to exempt firemen and honorably discharged military personnel, pursuant to R. S. 45:24-9, et seq., as amended, exempt said licensees from municipal licensing requirements. See Tagmire v. Atlantic City, 35 N. J. Super. 11, 113 A.2d 59 (App. Div. 1955). Such exemption, however, does not extend to transient merchants as defined in R. S. 45:24-1. See Shapiro v. Newark, 44 N.J. Super. 530, 533, 130 A.2d 907, 909 (Law Div. 1957). For statutory provi-



sions relating to transient merchants or itinerant vendors, see R. S. 45:24-1 et seq.

9-69. **Definitions.**

As used in this article:

Peddlers means and includes persons commonly and variously referred to as peddlers, hawkers, or hucksters, who go from place to place by traveling on foot or by motor, or other vehicle, on the streets or sidewalks or from house to house, and sell services or carry with them goods, wares, or merchandise for the purpose of selling and delivering them to consumers. The term peddlers also includes those persons who engage in selling or offering for sale any ride or other form of amusement on any types of mobile amusement devices such as whips, fire engines, merry-go-rounds, and the like, that are usually part of, attached to, or pulled by, motor vehicles.

Solicitors means and includes persons commonly referred to as either solicitors or canvassers, who sell services or goods by sample or

by soliciting or taking any orders for future delivery, with or without accepting an advance payment for the goods; provided, however, that nothing in this article shall be construed to apply to or include licensed real estate agents or brokers; nor to require that any such agent or broker obtain any license under the provisions of this article.

Transient merchants means and includes persons commonly referred to as either transient merchants or itinerant vendors, who engage in a merchandising business in the township with intent to close out or discontinue such business within one year from the date of commencement, including those who for the purpose of carrying on such business, hire, lease, or occupy any building, lot, structure, or railroad car for the exhibition and sale of such goods, wares, and merchandise; but nothing herein shall be construed to affect the sale of fruits, vegetables and farm products, such as meats, poultry, butter and eggs, as provided in R. S. 45:24-1.

Ord. Dec. 15, 1964, § 1)

CROSS REFERENCE. For statutory definition of
transient merchants or Itinerant vendors,
see R. S. 45:24-1.

9-70. License required; exceptions.

(a) No peddler, transient merchant or solicitor as defined in section 9-69, except those described in paragraph "(b)" of this section, shall sell or dispose of, or exhibit or offer to sell or dispose of, any goods, wares, services, or merchandise within the township without first obtaining from the township clerk a license and having paid the license fee as hereinafter prescribed for the proper class of license, i.e., peddler's, transient merchant's or solicitor's.

(b) Honorably discharged veterans and exempt firemen who are properly and legally in possession of the special state licenses issued pursuant to R. S. 45:24-9, and members of any duly incorporated first aid squads providing volunteer service within the township, shall not

be required to apply for nor possess, nor pay any fees for, peddlers' or solicitors' licenses as herein prescribed, but such veterans, exempt firemen and first aid squad members shall abide by all requirements as to the regulation of peddling and soliciting in the township. Such veterans, exempt firemen and first aid squad members are still required to apply for, pay fees for, and obtain the transient merchant's license and abide by all the regulations regarding same.

(c) Certain charitable, religious, and historical societies as defined in R. S. 45:24-7 are excepted from the requirements for obtaining transient merchant licenses as long as such societies comply with the provisions of R. S. 45:24-7.

(Ord. Dec. 15, 1964, § 2)

9-71. Applications for licenses; contents; accompanying data.

(a) Any person desiring a license as a peddler, solicitor or transient merchant shall obtain a blank application form provided by the township clerk, for each class of license desired by the applicant.

(b) The completed application form shall contain the following information:

- (1) Name of applicant;
- (2) Business address;
- (3) Permanent home address;
- (4) Description of applicant;
- (5) Description of nature of business and goods and services to be sold;
- (6) Names and addresses of firms which the goods and services making up the stock were or are to be purchased;
- (7) If farm and orchard products, whether grown by applicant;

- (8) Names and addresses of employers or firms represented with letter from such employers or firms authorizing applicant to act as their representatives;
- (9) The length of time for which the license is desired;
- (10) Description of vehicle to be used with license number;
- (11) Names and addresses of 3 business references or 3 property owners in Middlesex County, who will certify as the applicant's good character and business responsibility, or, in lieu of the names and references, any other available evidence as to his good character and business responsibility as will enable an investigator properly to evaluate such character and business responsibility of the applicant;



- (12) Place of residence of applicant for the preceding 5 years;
- (13) Dates, locations, and nature of offenses for each arrest and conviction for any crimes;
- (14) Such additional pertinent information that the township clerk deems appropriate.

(c) The completed application shall be accompanied by the following data:

- (1) Fingerprints of the applicant;
- (2) Personal photograph of the applicant taken within 60 days of the filing of the applicant.

(Ord. Dec. 15, 1964, § 4)

9-72. Prerequisites to issuance of peddler's license.

(a) Any peddler as defined in this article, prior to receiving a peddler's license, shall file with the township clerk an insurance policy of a company duly licensed to transact business under the insurance laws of this state,

conditioned for the payment of a sum of not less than \$100,000.00 to satisfy all claims for damages, by reason of bodily injury to, or death of, any one person, resulting from an accident; and a sum of not less than \$300,000.00 to satisfy all claims for damages, by reason of the bodily injuries to, or the death of, all persons, on account of any such accident, by reason of the ownership, operation, maintenance, or use of such vehicle upon any public streets; and conditioned for the payment of a sum not less than \$5,000.00 to satisfy any claim for damages to property of any one person, resulting from an accident, and a sum of not less than \$5,000.00 to satisfy all claims for damages to property of all persons, on account of any such accident, by reason of the ownership, operation, maintenance, or use of such vehicle upon any public street. The peddler's license, if issued, shall become effective and operation thereunder shall be lawful only so long as the insurance policy shall remain in force to the full and collectible amounts as aforesaid.

(b) Upon the filing of the insurance policy specified in paragraph "(a)" the township clerk shall notify the director of police of such filing.

(Ord. Dec. 15, 1964, § 4)

9-73. Special prerequisites for transient merchant's license.

In addition to the filing of the completed application form referred to in the preceding section, an applicant for a transient merchant's license shall also fully comply with all the provisions of section 9-74 of this article and with the provisions of section 9-74 of this article and with the provisions of R.S. 45:24-1 et seq., as amended and supplemented, before his application shall be considered by the township clerk.

(Ord. Dec. 15, 1964, § 4)

9-74. Statutory prerequisites for transient merchant's license.

(a) Sworn applications. Pursuant to R. S. 45:24-4, each application for a transient merchant's license shall be sworn to and shall disclose the name and residence of the owner or person in whose interest such business is conducted; the average quantity and kind, as nearly as can be, and the value of the personal property intended to be sold or exposed for sale in the township; the names and post-office addresses of the persons from whom goods making up the stock were or are to be purchased. The township clerk in arriving at the valuation may require the submission of bills or invoices of such personal property.

(b) Declaration under oath. Pursuant to R.S. 45:24-2, each transient merchant as defined in this article shall, before offering for sale any personal property, make a declaration, under oath, to the township clerk, of the number of days he proposes to engage in such business, together with a statement as to the specific

location of such personal property by street and number and whether on the premises from which they are to be sold or in warehouses or storage.

(c) License fee; term of license. Pursuant to R. S. 45:24-3, each transient merchant shall, before offering for sale any personal property, pay to the township clerk the license fee prescribed by section 9-77. Upon payment of such fee, the transient merchant shall be entitled to apply for, and if such application is approved he shall receive a transient merchant's license which shall continue in favor of the person to whom it is issued for the period of 180 days from the day of issuance.

(d) Bond. Pursuant to R. S. 45:24-5, before a transient merchant's license shall issue, the applicant shall execute and deliver to the township clerk a good and sufficient bond with good and sufficient surety, to be approved by the township clerk equal in amount to 25 percent of the value of the personal property shown in the declarations and disclosures required under the provisions of this section, but in no

event shall the bond be less than \$1,000.00. It shall remain in force for one year, and shall be conditioned to indemnify and pay the municipality any penalties or costs incurred in the enforcement of any of the provisions of this article, and to indemnify or reimburse any purchaser of such personal property in a sum equal to at least the amount of any payment such purchaser may have been induced to make through the misrepresentation as to the kind, quality, or value of the personal property, whether the misrepresentations were made by the owners or their servants, agents, or employees, either at the time of making the sale or through any advertisement printed or circulated with reference to such personal property or any part thereof.

(e) Designation of agent for service of process. Pursuant to R. S. 45:24-6, before a transient merchant's license shall issue, the applicant shall file with the township clerk, an instrument in writing nominating and appointing the township clerk his true and lawful agent with full power and authority to acknowledge

service or notice of process for and on behalf of the applicant in respect to any matters connected with or arising out of the license and the bond given as required to paragraph "(d)" of this section, or for the performance of the conditions of the bond or for any breach thereof. It shall also contain recitals to the effect that the applicant consents and agrees that service of any notice or process may be made upon such agent and when so made, shall be as valid as if personally served upon the applicant according to the laws of this or any other state and waiving any claim or right of error by reason of such acknowledgement of service or manner of service.

(f) License. A separate license shall be obtained for each branch, establishment or separate place of business in which the occupation of a transient merchant is carried on, and each license shall authorize the licensee to carry on, pursue or conduct the business of a transient merchant only at the location indicated thereby.



(Ord. Dec. 15, 1964, § 3)

9-75. Violations by transient merchants.

Any transient merchant who fails to comply with the provisions and requirements of this article or any part thereof, or makes a false or fraudulent representation in any statement required by this section to be filed by him, or falsely represents by advertising or otherwise that such personal property is in whole or in part damaged goods saved from fire, or makes any false statement as to the previous history or character of such personal property, shall be guilty of a violation of the provisions of this article.

(Ord. Dec. 15, 1964, § 3)

9-76. Investigation of applicant; approvals and disapprovals.

(a) The application, after being filed with the township clerk, shall be forwarded by him to the director of police for review. The director shall investigate the information

available as to the good moral character of the applicant and shall then signify his approval or his disapproval on the reverse side of the application form, with his reasons therefor, such as conviction of crime involving moral turpitude.

(b) If the application is disapproved, such license shall not be issued.

(c) If the application is approved and the payment of the fees prescribed by section 9-77 has been made, the license shall be issued by the township clerk.

(Ord. Dec. 15, 1964, § 5(a))

9-77. License fees, terms of licenses.

The prescribed fees and effective periods for each class of licenses are as follows:

- (a) Transient merchant's license , for a period of 180 days from day of issuance \$500.00
- (b) Solicitor's license, on a calendar year, for each vehicle, per annum 5.00

(c) Peddler's license, on a calendar year, for each vehicle, per annum 40.00.

(Ord. Dec. 15, 1964, § 3(b), 5(b))

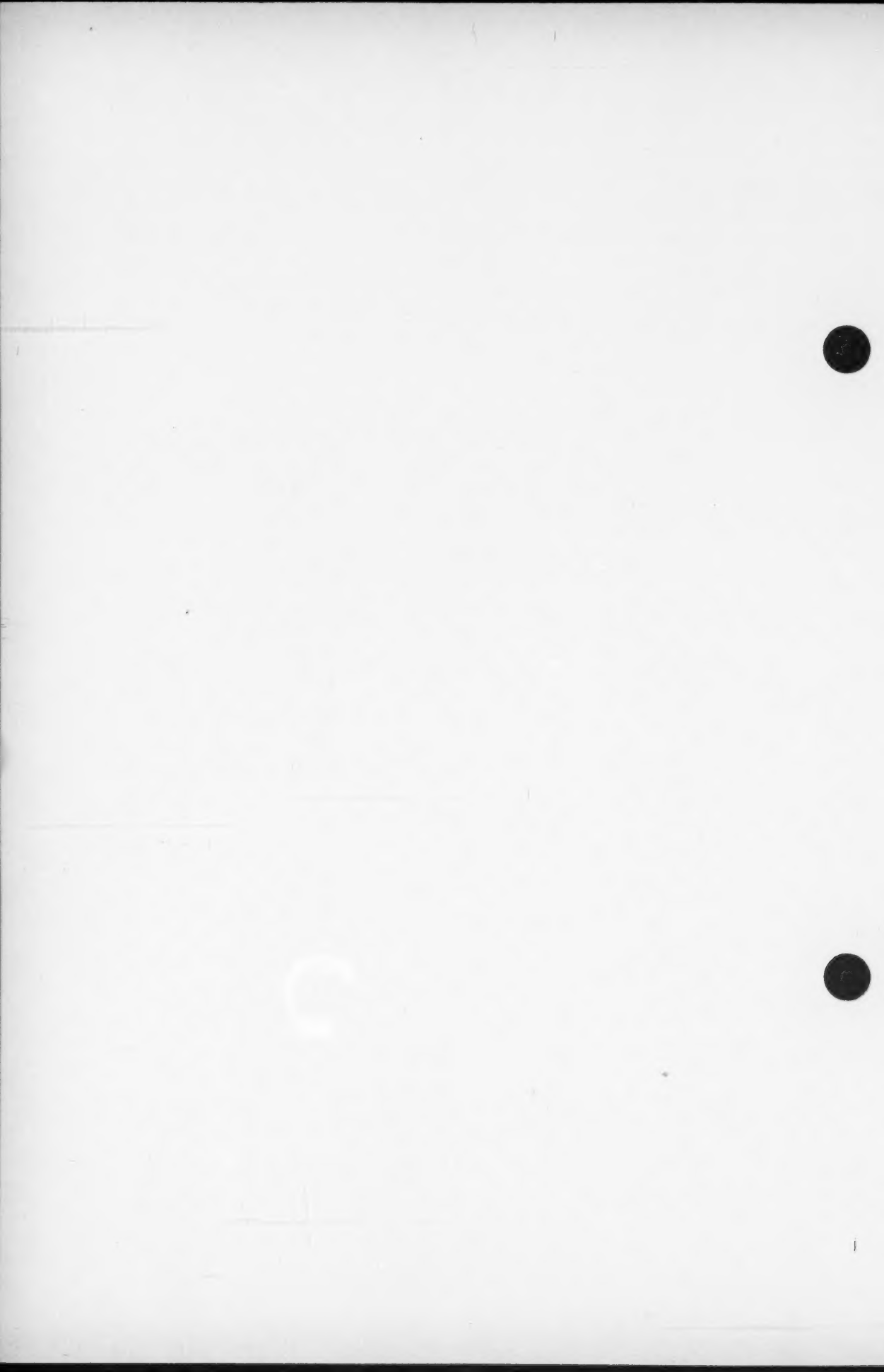
9-78. Issuance of licenses; contents.

To every peddler granted a license or licenses, the township clerk shall also issue for each automobile, vehicle or wagon used in peddling, a metal plate, bearing the words "Licensed Peddler, Township of Woodbridge," together with the number of the license and the year for which it is issued. The automobile, wagon, or other vehicle used for such peddling shall have affixed thereon the said metal plate.

(Ord. Dec. 15, 1964, § 5(f))

9-80. Display of license by transient merchant.

Every transient merchant to whom a license shall be granted under this article shall post his license certificate in a promi-



nent place of his business premises, and shall keep same posted while engaged in the business licensed.

(Ord. Dec. 15, 1964, § 5(f), 7)

9-81. Issuance of button to solicitor; display.

Every solicitor whose application shall be approved shall be issued a license button which shall be affixed on the lapel of his coat or garment while engaged in soliciting in the township.

(Ord. Dec. 15, 1964, § 5(f))

9-82. Records and reports of township clerk.

The township clerk shall keep the necessary books for recording the time that the application for the license is received, showing its class, whether new or renewal, name of license, regular number of blank form, when the application was approved by the director, the amount of fee received therefore, and the date when the license was issued.

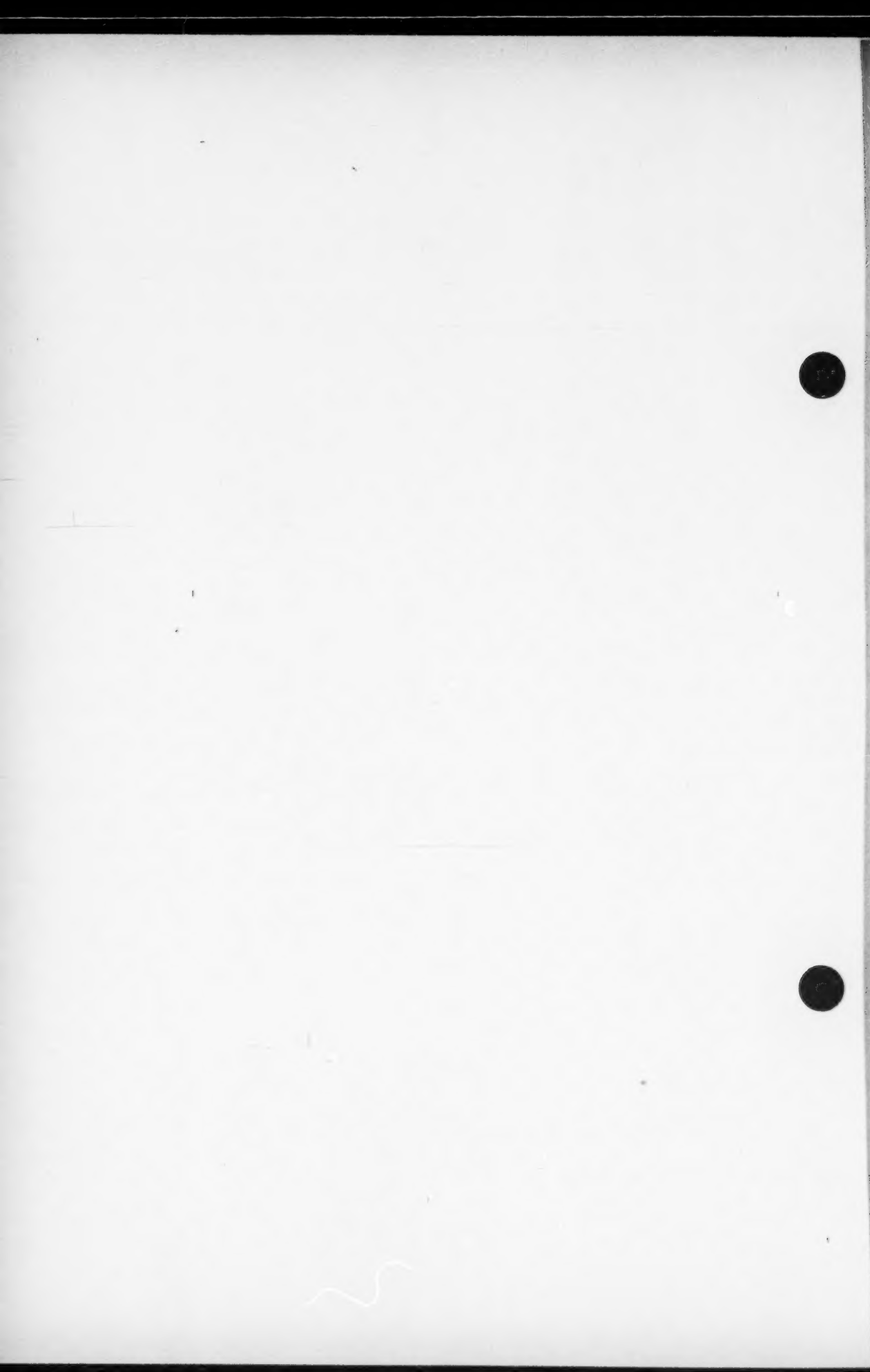
9-83. License not transferable.

No license issued pursuant to this article shall authorize any person except the person designated in said license to engage in the business thereunder. Said license shall not be transferable from the person to whom it was specifically issued to any other person. A separate license shall be obtained through the methods and procedure described hereinabove in this article by every person who desires to be licensed or acts as an employee or agent of any other person already so licensed.

(Dec. 15, 1964, § 6)

9-84. License to remain in possession of licensee; production on request.

(a) Every peddler and solicitor licensed pursuant to the provisions of this article shall carry the license with him at all times while engaged in his trade or occupation in the township.



(b) No person licensed pursuant to this article shall use a gong, bell, or other instrument or sound device which emits a loud or raucous sound to attract the attention of the public.

(c) No person licensed pursuant to this article shall strew or litter or cause to be strewn or littered the public streets or sidewalks with refuse or waste matter of any kind or to in any way interfere with the comfort or convenience of the residence or business of the occupants or owners of near-by properties.

(d) No peddler or solicitor licensed pursuant to this article shall go in and upon private property or residences in this township who has not been specifically requested to do so by the owners or legal occupants of said private property or residences other than between the hours of 9:00 a.m. and 5:00 p.m.

(e) No peddler shall use the public streets to display or sell any goods, wares, services, rides or merchandise in this township before 9:00 a.m. or after 8:00 p.m.

(f) No person licensed pursuant to this article shall stand nor shall his vehicle be parked for the purpose of displaying or selling wares, merchandise, rides or services on any public or private property within a distance of 200 feet of the nearest public, parochial, or private school in the township during school hours. School hours shall mean any time between 7:30 a.m. and 5:30 p.m. on weekdays, during such days as said schools may be in session.

(Ord. Dec. 15, 1964, § 9(e))

9-87 Revocation or suspension of licenses.

(a) Licenses issued pursuant to R.S. 45:24-10. Pursuant to the provisions of R.S. 45:24-13, a judge of the municipal court shall have the power to order the cancellation of any license issued under authority of R. S. 45:29-9 (pertaining to special peddler's and solicitor's licenses for certain veterans and exempt firemen) which has been sold or transferred by the original lessee. A judge of the municipal court

shall mail the order of cancellation to the county clerk in whose county the license was granted.

(b) Municipal licenses. A license issued pursuant to the provisions of this article may be suspended or revoked by the township clerk or by the director of police by reason of the violation of the terms of the licensee, of the violation of any provision of this article or any other municipal ordinance or state or federal statute, or falsification or misrepresentation in applying for a license. The licensee shall be granted a hearing with notice by the township clerk or director of police upon request. No license may be suspended for more than 2 weeks without a hearing.

(Ord. Dec. 15, 1964, § 10)

9-88. Penalty.

Any person who violates any provision of this article shall, upon conviction thereof, be punished by a fine not exceeding \$500.00, or by imprisonment for a term not exceeding 90 days,



or both. A separate offense shall be deemed committed on each day during or on which a violation occurs or continues.

(Ord. Dec. 15, 1964, § 11; May 16, 1972, §§ 1, 2)



BOROUGH OF WOODCLIFF LAKE

ORDINANCE OF THE BOROUGH OF WOODCLIFF LAKE

NOTICE

ORDINANCE #76-8

NOTICE IS HEREBY GIVEN that the following proposed ordinance was introduced and passed on first reading at a meeting of the Mayor and Council of the Borough of Woodcliff Lake, in the County of Bergen, New Jersey, held on the 12th day of July, 1976, and that said ordinance will be taken up for further consideration for final passage at a meeting of said Borough Council to be held at its meeting room in the Borough Hall, Woodcliff Lake, New Jersey, on the 26th day of July 1976 at 8:30 o'clock P.M., or as soon thereafter as the matter can be reached, at which time and place all persons who may be interested therein will be given an opportunity to be heard concerning the same.

PAUL F. DATTOLI

Borough Clerk

ORDINANCE NO. 76-8

AN ORDINANCE TO AMEND CHAPTER 51 OF THE
"CODE OF THE BOROUGH OF WOODCLIFF LAKE,
COUNTY OF BERGEN, AND STATE OF NEW
JERSEY." ENTITLED "PEDDLING, SOLICITING
AND CANVASSING." FORMERLY KNOWN AS
ORDINANCE NO. 161 AND THE AMENDMENTS AND
SUPPLEMENTS THERETO.

BE IT ORDAINED, by the Mayor and Council of
the Borough of Woodcliff Lake, County of Bergen,
and State of New Jersey, as follows:

Section 1. "Chapter 57--'Peddling, solicit-
ing and canvassing'" of the 'Code of the Borough
of Woodcliff Lake, County of Bergen, and State
of New Jersey." formerly known as Ordinance No.
161, and the amendments and supplements thereto,
is hereby amended to read:

57-1. Title.

This Ordinance shall be cited as the "Wood-
cliff Lake Peddler's and Solicitor's Ordinance."

57-2. Definitions.

As used in this section, the following words
shall have the following meanings:

A. "Peddler" shall mean a person who goes from home to home or from place to place, whether on foot or in a vehicle, selling and delivering goods and services.

B. "Transient vendor" shall mean a person in the business of selling personal property or services who conducts his business from a fixed location, but who does not intend to continue in business within the Borough for at least one (1) year. A proprietor of a business which is seasonal in nature who suspends business during the off-season shall not for that reason alone be considered a transient vendor.

C. "Solicitor" shall mean a person who goes from house to house or from place to place selling merchandise by sample or by taking orders for future delivery, with or without accepting advance payments for the goods, regardless of whether the solicitation is made by mail, telephone or personal contact. The provisions of this section shall apply to the person who comes in personal contact with the buyer whether he



obtains the order, delivers the goods or accepts money in payment for them. Solicitor shall also mean any person who goes from house to house or from place to place for the purpose of obtaining alms, contributions or subscriptions, or who does research analyses, makes surveys or opinion polls, obtains rating data or similar information, or who engages in any similar work which involves a door-to-door or place-to-place activity.

D. "Junk Dealer" shall mean any person who goes from house to house or from place to place, whether on foot or in a vehicle, purchasing or otherwise acquiring or collecting old or second-hand metal, bottles, glassware, tinware, paper, lumber, plumbing fixtures, dismantled or inoperable automobiles, dismantled or inoperable machinery, or any other thing which is no longer used or useable for its intended purpose but which has value because of the parts or materials it contains.

E. "Non Profit Organizations" shall mean a group of persons, corporation or association organized for philanthropic, charitable, religious, patriotic or other public service purposes and not for private gain. Examples of nonprofit organization shall include volunteer fire departments and first aid squads, veteran's groups and organizations which assist the poor, the aged, the sick, the physically handicapped or the mentally retarded, or which aid victims of fire, flood or similar catastrophes. This enumeration is intended to be typical only and shall not be construed as exclusive.

57-3 License Required.

No person shall engage in business within the Borough of Woodcliff Lake as a peddler, solicitor, transient vendor or junk dealer without having first obtained a license and paid the required license fee.

57-4 Exceptions.

Sub-section 57-3 shall not apply to any of the following persons:

A. Any person licensed by the Commissioner of Banking and Insurance or the Real Estate Commission of the State of New Jersey.

B. Persons selling personal property at wholesale to dealers in such articles.

C. Any sale required by statute or order of any court.

D. Any persons engaged in delivering merchandise or other things in the regular course of business to the premises of the person ordering or entitled to receive it.

E. Any person soliciting votes for a bona fide candidate for political office.

57-5 Nonprofit Organizations.

A. The Mayor and Council may, by Resolution, suspend the operation of this Ordinance, or any portions thereof, upon application of a non-profit organization, if the Mayor and Council

finds that the application is a bona fide non-profit organization. Applications by nonprofit organizations shall be filed with the Borough Clerk providing a sworn statement containing the following information:

(1) The name and purpose of the organization for which the permit is sought.

(2) The names and addresses of the officers of the organization.

(3) The names and addresses of the agents or representatives who will solicit, sell merchandise or distribute literature in the Borough.

B. In lieu of the usual investigation of applicants for a license provided for in this section, the Police Department shall conduct whatever inquiry it considers necessary to determine that the organization in question is a bona fide non-profit organization and the persons who will be soliciting on behalf of the nonprofit organization are of good character and reputation. It shall communicate its findings,

together with a recommendation that the ordinance, or any portions thereof, be suspended, to the Mayor and Council within a reasonable time. Upon being satisfied that it is, he shall notify the Borough Clerk, who shall issue a special permit to the organization in question.

C. Each representative or agent of the organization shall carry proper identification indicating the name of the organization and his own name and address, and shall display it upon request.

D. Nonprofit organizations shall comply with all other applicable provisions of this revision, except that they shall be permitted to carry on their activities on Sundays.

57-6. Application Information.

Applications for a license under this section shall be sworn to and contain the following information:

A. The name and permanent and local address of the applicant. If the applicant is a corporation, the name and address of its registered agent.

B. A complete physical description of the applicant, if the applicant is a natural person, together with three (3) recent photographs approximately 2" x 2" showing the head and shoulders of the applicant in a clear and distinguishing manner.

C. If the licensed activity is to be carried on at a fixed location, the address and a description of the premises.

D. If a vehicle is to be used, its description, including the license number.

E. If the applicant is employed by another, the name and address of the employer, together with credentials establishing the exact relationship.

F. The days of the week and the hours of the day during which the licensed activity will be conducted.

G. A description of the nature of the business and the goods, property or services to be sold or supplied.

H. A statement as to the location or source of supply of any merchandise to be offered for sale and the method of delivery.

I. A list of all of the other municipalities in the County of Bergen where the applicant has made application for a peddler's, solicitor's or vendor's license and whether such license was issued or denied.

J. A statement as to whether the applicant has been convicted of any crime or the violation of any municipal ordinance other than traffic offenses and, if so, the date and place of conviction, the nature of the offense, and the punishment or penalty imposed.

K. Appropriate evidence as to the good character and business responsibility of the applicant so that an investigator may properly evaluate his character and responsibility.

L. The applicant shall be fingerprinted if the Police Department determines that fingerprints are necessary for proper identification. Fingerprint records shall be immediately processed for classification and identification.

M. At the time of filing of the application, a fee of two (\$2.00) dollars shall be paid to the Borough Clerk to cover the costs of an investigation of the facts stated in the application.

N. All applications shall be on forms furnished by the Borough. Applications by partnerships shall be signed by all partners with the information required by this subsection supplied in detail as to each partner, and applications of corporations shall have attached individual statements containing all the information required by this sub-section relating to each employee or agent of the corporation who shall engage in the licensed activity, and shall be signed by each such employee or agent.

57-7. Investigation of Applicants.

Each application shall be referred to the Police Department, which shall immediately institute whatever investigation of the applicant's business responsibility and moral character it considers necessary for the protection of the public. It shall communicate its findings, in writing, together with a recommendation that the application be granted or denied, to the Mayor and Council within a reasonable time. The Mayor and Council shall consider the application at their next regular meeting after receiving the report of the investigation. If, based upon the information contained in the application and the investigator's report, the Mayor and Council decide that the applicant's character, ability or business responsibility are unsatisfactory, or that the products, services or activity are not free from fraud, they shall disapprove the application and refuse to issue the license and so notify the applicant. Otherwise, the Mayor and Council shall approve

the license and the Borough Clerk shall then issue the license immediately, provided that the required license fees have been paid.

57-8. Contents of License.

Licenses shall be in a form which the Mayor and Council shall prescribe by Resolution, and shall contain the following information:

- A. The name and address of the license.
- B. The number of the license and the nature of the licensed activity.
- C. The address at which the licensed activity is conducted, if the activity is carried on in a fixed location.
- D. If the licensed activity is conducted from a vehicle, the make, model and license number of the vehicle.
- E. The expiration date of the license.
- F. Any other appropriate information which the Mayor and Council may, by Resolution Require.

57-9. License Record.

The Borough Clerk shall keep a record of all licenses issued under this chapter. The record shall be in a form prescribed by Resolution of the Mayor and Council and shall contain the same information as is required by subsection 57-8 to be contained in the license. It shall also indicate the amount of the fee paid for the license, the date upon which payment was received, the date of the issuance of the license, whether the license is a new license or a renewal, and any other information which the Mayor and Council may, by Resolution, require.

57-10. Display of License.

When the licensed activity is conducted at a fixed location, or from a vehicle, a license shall be prominently displayed at the location or in the vehicle. In all other cases, the licensee shall have the license in his posses-

sion at all times and shall display it upon the request of any police officer or any person with whom he is doing business.

57-11. Transferability.

Every license shall apply only to the person, location (where the activity is to be conducted at a fixed location) and vehicle (where the activity is to be conducted from a vehicle) to whom or to which it was issued and shall not be transferable without the consent of the Mayor and Council.

57-12. Expiration Date; Renewal

All licenses shall expire on December 31 of the year of issue at 12:00 midnight local time. Applications for the renewal of licenses shall be made not later than December 1 of the year of issue.



57-13. License Fee.

The fee for a license required for this section shall be twenty-five (\$25.00) dollars. Where the applicant is other than an individual, and where more than two (2) agents, employees or members of the applicant are to carry on the licensed activity, there shall be an additional fee of five (\$5.00) dollars per person for each person in excess of two (2) who shall carry on the licensed activity. Where more than one (1) vehicle is to be used by the applicant to carry on the licensed activity, there shall also be an additional charge of five (\$5.00) dollars for each additional vehicle.

57-14. Hours of Sale.

No person licensed under this section shall engage in business before 9:00 A.M. or after 5:00 P.M. on weekdays or at any time on Sundays. This paragraph shall not apply to licensees who

are expressly invited by residents at the Borough to come to their homes at a different time.

57-15. Sale of Food and Produce.

A. All licensees who sell or deliver or display for sale food and produce from vehicles which are wholly or partly open on any side shall at all times keep the food and produce completely screened or covered with satisfactory materials in order to prevent flies or other insects from alighting around or upon any merchandise.

B. All licensees selling, delivering or displaying for sale seafood, meats, poultry or dairy products shall transport them only in refrigerated vehicles. The products shall remain in the refrigerated portion of the vehicle until the time of sale or delivery. The refrigerated portion of the vehicle while in use



shall be maintained at a temperature low enough to completely safeguard all of the products from a health and sanitary standpoint.

C. No license shall at any time permit any waste products, materials or parts of produce or other merchandise to remain in or upon any street, roadway, curb or walk, but shall remove any debris that may have fallen from his vehicle and place it immediately in a leakproof metal container provided with a tight-fitting cover.

D. All food or produce sold by any licensee shall at the time of delivery be placed in bags or other suitable containers when it is handed to the customer.

57-16. Conduct of Licensees.

Every person licensed under this section shall conduct himself according to the following rules and regulations:



A. He shall not enter or attempt to enter the house of any resident of the Borough of Woodcliff Lake without an express invitation from the occupant of the house.

B. He shall not conduct himself in a manner that is objectionable or annoying to the occupant of any house.

C. No licensee or any person acting on his behalf shall shout, blow a horn, ring a bell or use any other sound-making or amplifying device on any street, park or other public place, or on any private premises so that sounds are produced which can be plainly heard on streets, avenues, parks or other public places for the purpose of attracting attention to the licensee or to the activities carried on by him.

D. In general, all licensees and any vehicles used by them in the course of the licensed activity shall fully comply with all of the provisions of this revision or other applicable municipal ordinances, and all applicable

state laws or regulations, particularly those which deal with the protection of the public health, safety and welfare.

57-17. USE OF VEHICLES.

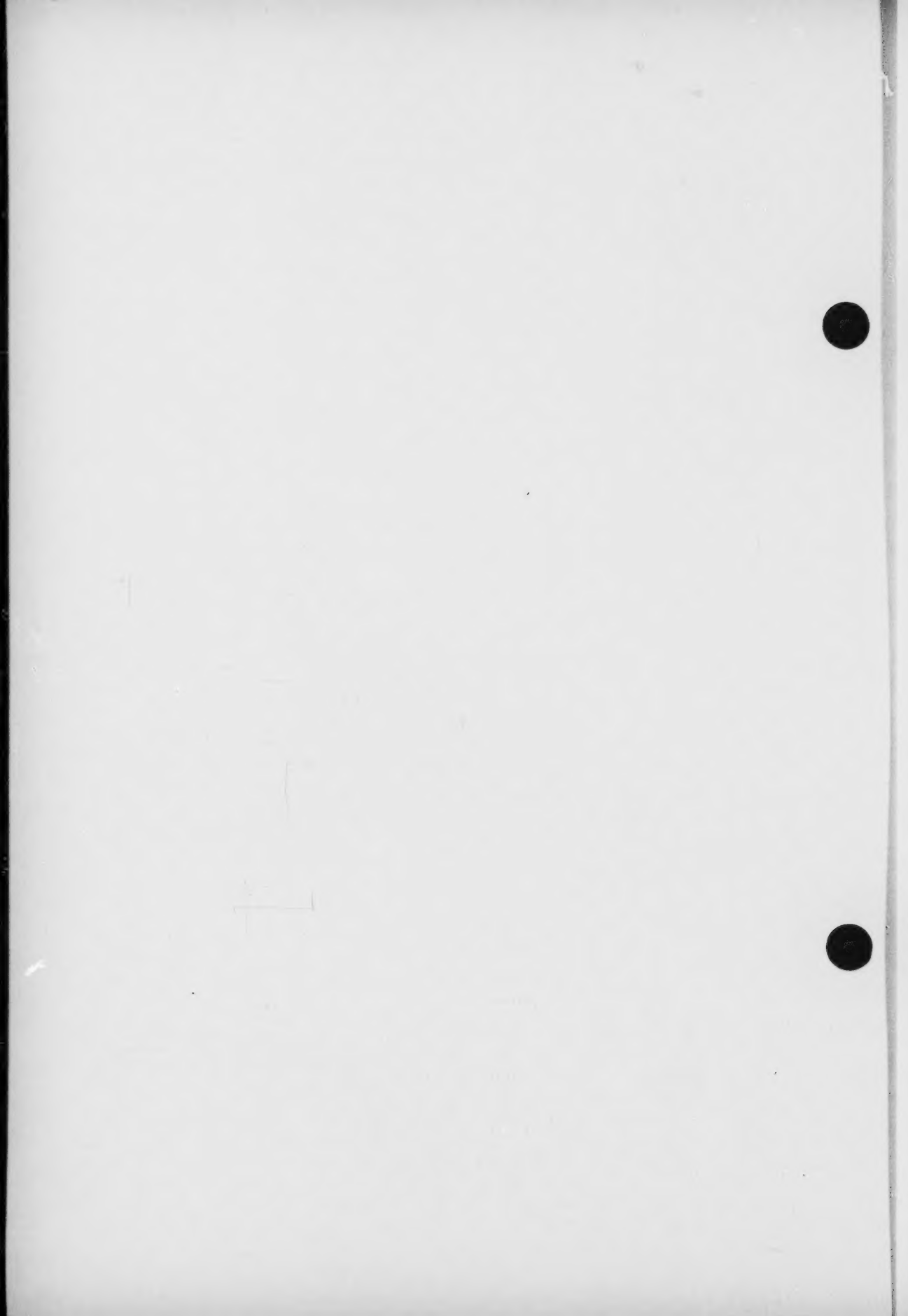
A. No licensee shall permit any debris, waste material, rotting produce or similar matter to remain in or upon his vehicle unless it is contained in a leakproof metal container provided with a tight-fitting metal cover.

B. No licensee shall transact business from his vehicle unless it is properly parked immediately adjacent to the curb of a public street in a permitted locality. No licensee shall at any time double park his vehicle while transacting business, nor transact business other than on the curb side of his vehicle.

C. Licensees selling food and produce shall prohibit, to the extent reasonably possible, the eating of any merchandise directly from their vehicles.

D. Before a licensee selling food and produces uses any vehicle in connection with his business, the vehicle shall be submitted to the Borough of Woodcliff Lake Board of Health for inspection and approval relative to compliance with this section. Whenever requested during the term of the license, the licensee shall submit his vehicle for reasonable reinspection. No vehicle shall be used by the licensee unless it has been approved for use by the Board of Health. A certificate of written approval shall remain in the vehicle at all times and shall be shown by the operator to any member of the Borough of Woodcliff Lake Police Department or any other official of the Borough who may request to see it.

E. Any vehicle used in connection with any activity licensed by this section shall have the name of the licensee printed on the side of the vehicle in letters at least two (2") inches high.



57-18. Location Restrictions.

No licensee shall have an exclusive right to any locations in the public streets, nor shall he be permitted a stationary location on the streets or be permitted to operate in a congested area where his operations may impede or inconvenience the free flow of pedestrian and vehicular traffic. For the purpose of this sub-section, the judgment of a police officer, if reasonable and made in good faith, shall be conclusive as to whether the area is congested or traffic impeded or inconvenienced.

57-19. Power to Make Additional Rules and Regulations.

The Mayor and Council may, by Resolution, make rules and regulations which interpret or amplify any provision of this section or for the purpose of administering the provisions of this section, or making them more effective. No regulation shall be inconsistent with, alter or amend any provision of this section, and no

regulation shall impose any requirement which is in addition to or greater than the requirements that are expressly or by implication imposed by any provision of this section.

57-20. Revocation of License; Causes.

Any license issued under the provisions of this section may be revoked by the Mayor and Council after notice and a hearing for any of the following causes:

A. Fraud or misrepresentation in any application for a permit or license.

B. Fraud, misrepresentation or other dishonesty in the conduct of the licensed activity.

C. A violation of any provision of the section, or any other provision of this revision or other ordinance of the Borough of Woodcliff Lake applicable to the licensed activity.

D. Conviction of the licensee for any felony or high misdemeanor, or a misdemeanor or disorderly person's offense involving moral turpitude.

E. Conduct of the licensed activity whether by the licensee himself or his agents or employees in an unlawful manner or in a manner that constitutes a breach of the peace or a menace to the public health, safety or welfare.

57-21. Notice of Hearing.

Notice of a hearing for the revocation of a license or permit shall be given in writing by the Borough Clerk. The notice shall specifically set forth the grounds upon which the proposed revocation is based and the time and place of the hearing. It shall be served by mailing a copy of the revocation to the licensee at his last known address by certified mail, return receipt requested, at least five (5) days prior to the date set for the hearing.

57-22. Hearing; Determination.

At the hearing, the licensee shall have the right to appear and be heard, to be represented by an attorney, to present witnesses in his own

behalf, to cross-examine opposing witnesses, and to have a permanent record made of the proceedings at his own expense. If such a record is made, two (2) copies shall be furnished to the Borough without charge. The Mayor and Council shall revoke or suspend the license if they are satisfied by a preponderance of the evidence that the licensee is guilty of the acts charged.

57-23. Reinstatement of Revoked Licenses.

The Mayor and Council may issue another license to a person whose license has been revoked or denied as provided in this section if, after a hearing, they are satisfied by clear and convincing evidence that the acts which led to the revocation or denial will not occur again; otherwise, no person whose license has been revoked or denied, nor any person acting for him, directly or indirectly, shall be issued another license to carry on the same activity.



57-24. Violations and Penalties.

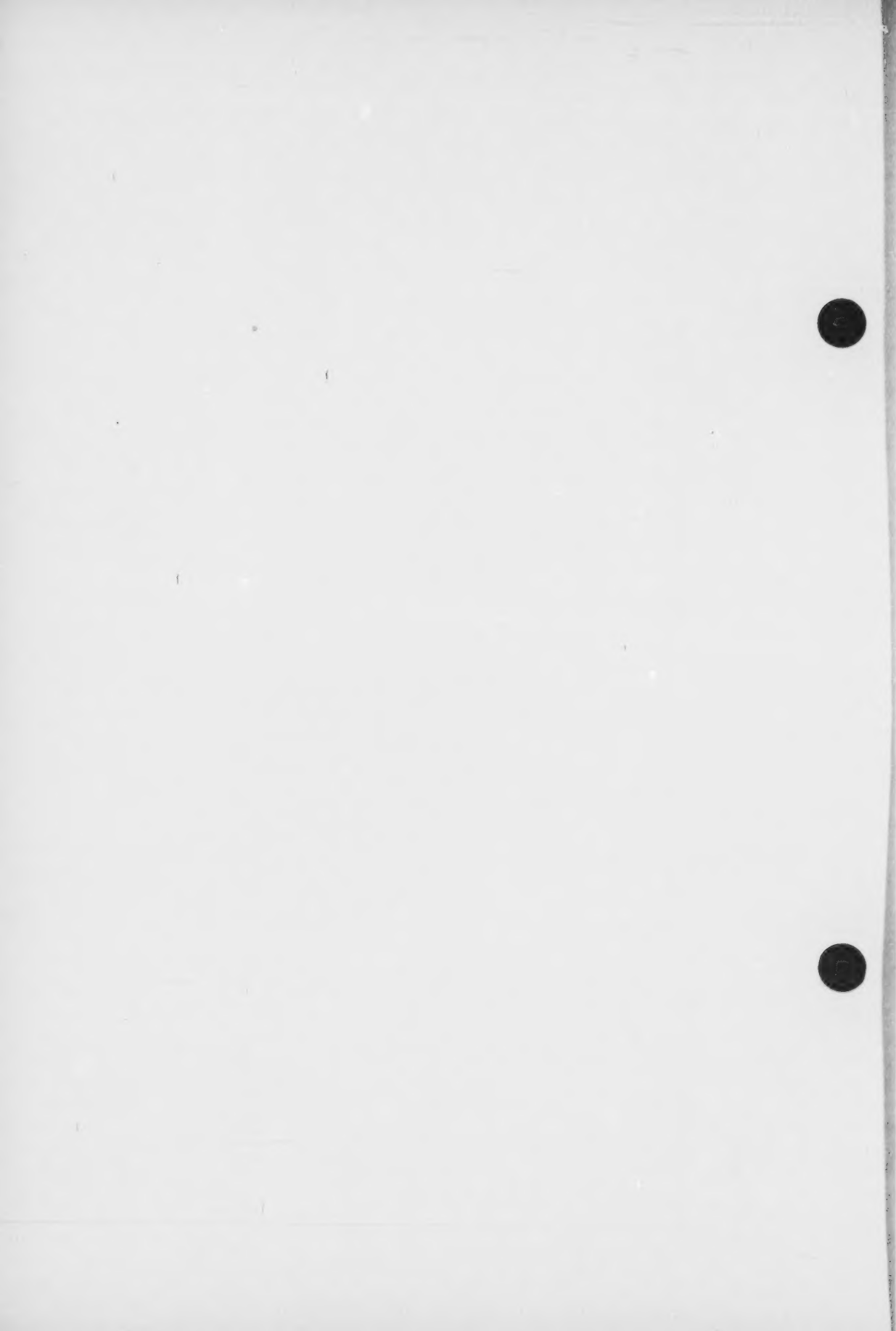
Any person violating any of the provisions and terms of this ordinance shall, upon conviction thereof, be subject to a fine of not more than two hundred (\$200.00) dollars and/or imprisonment in the county jail for not more than ninety (90) days.

57-25. Validity.

In case, for any reason, any section or provision of this ordinance shall be held to be unconstitutional or invalid, the same shall not be held to affect any other section or provision of this ordinance.

57-26. Inconsistent Ordinances Repealed.

Chapter 57 of the "Code of the Borough of Woodcliff Lake, County of Bergen, and State of New Jersey," formerly known as Ordinance No. 161 entitled "An Ordinance for Regulating and Licensing of Peddlers Hawkers, Solicitors and Canvassors" is hereby repealed.



Section 2. This Ordinance shall take effect immediately upon final passage and publication according to law.

Local Review

July 15, 1976

Fee \$140.30.....